

APPENDIX 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION
3 -----

4 MICHAEL CLOUD, :
5 :
6 Plaintiff, :
7 : Civil Action No.:
8 vs. :
9 : 3:20-CV-01277-E
10 THE BERT BELL/PETE ROZELLE :
11 NFL PLAYER RETIREMENT PLAN, :
12 :
13 Defendant. :
14 -----

15 INDIVIDUAL AND 30(b)(6) DEPOSITION OF
16 HESSMAN VINCENT

17 DATE: August 10, 2021
18 TIME: 10:06 a.m. to 8:34 p.m.
19 LOCATION: Groom Law Group
20 1701 Pennsylvania Avenue
21 Suite 1200
22 Washington, D.C. 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

16 Q Mr. Reynolds is no longer on the
17 committee. Is that correct?

18 A That's correct.

19 Q What's his role at the board meetings
20 now that he is no longer on the committee?

21 A He decides -- he advises the board on
22 board decision, appeal claims. No longer the

Page 18

Page 20

1 initial claims.

Page 19

Page 21

6 (Pages 18 - 21)

4 So if Patrick Reynolds or Chris Smith
5 was talking to board members about appeals, I would
6 need to talk to the members of the board to ask
7 them whether they received advice from Patrick
8 Reynolds or Chris Smith, correct?

9 A That is a possibility. Or you could
10 ask Patrick Reynolds or Chris Smith if they do.

11 Q If Patrick Reynolds or Chris Reynolds
12 didn't recall whether they talked to the board or
13 not, the best people for me to talk to whether they
14 spoke to Chris Smith or Patrick Reynolds would be
15 the board members. Is that right?

16 A That may be the case, yes.

Page 22

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Page 24

2 Q So if I had to determine whether
3 Ms. Smith or Mr. Reynolds were providing advice to
4 the board while they were both on the committee, I
5 would have to ask Patrick Reynolds or Chris Smith
6 about that, correct?

7 A That's correct.

8 Q And the only other people that would
9 know whether Chris Smith or Patrick Reynolds were
10 providing advice to the board and their specific
11 communications or conversations, would be the board
12 members themselves, correct?

13 A Yes. That may be the case. But as
14 far as I'm --

5 understanding for what you mean? In relation to
6 what?

7 A Mr. Cloud's appeal.

8 Q Okay. So you talked to Ms. Blackburn
9 yesterday specifically about Mr. Cloud's appeal,

Page 23

Page 25

	<p>16 If I wanted to know what was</p> <p>17 discussed for Ms. Blackburn to come to her decision</p> <p>18 to deny Mr. Cloud's request for benefits, I would</p> <p>19 have to ask her that question because you didn't</p> <p>20 ask her, right?</p> <p>21 A I did not ask her, that's correct.</p> <p>Page 26</p>
<p>7 Q Did you ever ask whether</p> <p>8 Ms. Blackburn had any recollection as to any</p> <p>9 discussion or debate as to Mr. Cloud's case?</p> <p>10 A I don't recall if a question was</p> <p>11 asked in that manner. But there was nothing unique</p> <p>12 that popped out to her about the case.</p> <p>Page 27</p>	<p>14 Q Did you ever ask Ms. Blackburn</p> <p>15 whether she discussed Mr. Cloud's case with Patrick</p> <p>16 Reynolds and Chris Smith?</p> <p>17 A I did not ask that.</p> <p>18 Q Did you user ask Ms. Blackburn what</p> <p>19 advice she received from third parties about</p> <p>20 Mr. Cloud's case?</p> <p>21 A I did not ask that question.</p> <p>22 Q When was the last time you spoke to</p> <p>Page 29</p>

8 (Pages 26 - 29)

5 Q So was there something that was asked
6 about his review and any independent research that
7 he conducted?

8 A No. It was nothing along those
9 lines.

10 Q Okay. Did you ask Mr. Cass whether
11 he received any advice from a third-party adviser
12 as it pertains to Mr. Cloud's case?

13 A I did not ask that question.

Page 30

Page 32

9 Q Did you ask Mr. Cass if he recalled
10 any discussions he had with any fellow board
11 members been Mr. Cloud's case?

12 A I did not ask that question.

Page 31

Page 33

9 (Pages 30 - 33)

<p>1</p> <p>6 Q And there was no discussion that --</p> <p>7 let me ask it a different way.</p> <p>8 You did not ask Mr. Cass whether he</p> <p>9 had any discussions about Mr. Cloud's case with any</p> <p>10 of the other board members. Is that correct?</p> <p>11 A I did not ask that question.</p> <p>--</p> <p>Page 34</p>	<p>11 Q Did you actually ask him what</p> <p>12 conversations he had with other members of the</p> <p>13 board about his decision on Mr. Cloud's claim?</p> <p>14 A I did not.</p> <p>15 Q Did you ask him whether he spoke to</p> <p>16 Mr. Reynolds or Ms. Smith in his review of</p> <p>17 Mr. Cloud's case?</p> <p>18 A I did not.</p> <p>?</p> <p>Page 36</p>
<p>5 Q What was Mr. Philip's response to</p> <p>6 those questions?</p> <p>7 A The same as the previous two; no</p> <p>8 unique knowledge, no notes kept, didn't review</p> <p>9 outside the meeting's website.</p> <p>10 Q Did Mr. Philips recall actually</p> <p>11 reviewing any of Mr. Cloud's records?</p> <p>12 A He doesn't recall the case.</p> <p>Page 35</p>	<p>6 Q Did you ask whether they ever kept</p> <p>7 any notes?</p> <p>8 A Not specifically in that manner, no.</p> <p>9 We asked them if they had any notes, and they do no</p> <p>10 have any notes.</p> <p>Page 37</p>

<p>6 Q So if a board member was to keep</p> <p>7 notes of their analysis of medical records and</p> <p>8 information presented in a disability application,</p> <p>9 they would keep those personally and independently</p> <p>10 of the benefits office. Is that correct?</p> <p>11 A That may be the case if they are</p> <p>12 keeping notes.</p> <p>Page 38</p>	<p>3 Q Did Mr. McCullum have any</p> <p>4 recollection of medical records presented by</p> <p>5 Mr. Cloud?</p> <p>6 A I didn't ask that question</p> <p>7 specifically.</p> <p>8 Q Did Mr. McCullum recall or have any</p> <p>9 recollection of the injuries, illnesses, ailments,</p> <p>10 that Mr. Cloud was presenting?</p> <p>11 A I didn't ask that question.</p> <p>12 Q Did Mr. McCullum recall ever having</p> <p>13 any conversations with Mr. Reynolds or Ms. Smith</p> <p>14 about Mr. Cloud's appeal?</p> <p>15 A That question was not asked.</p> <p>Page 40</p>
<p>1</p> <p>?</p> <p>Page 39</p>	<p>Page 41</p>

<p>8 Q Did he confirm to you that he</p> <p>9 actually did review Mr. Cloud's medical records?</p> <p>10 A I did not ask that question.</p> <p>11 Q Did you ask Mr. Van Note whether he</p> <p>12 had any conversations with Mr. Reynolds or</p> <p>13 Ms. Smith about Mr. Cloud's applications for</p> <p>14 disability benefits?</p> <p>15 A I did not ask that question.</p> <p>16 Q Did you ask Mr. Van Note whether he</p> <p>17 recalled any conversations or communications he had</p> <p>18 with any other board members about Mr. Cloud's</p> <p>19 medical records or applications for disability</p> <p>20 benefits?</p> <p>21 A I did not ask that question.</p> <p>Page 42</p>	<p>1 Q Did Mr. Smith recall ever having any</p> <p>2 notes analyzing Mr. Cloud's request for disability</p> <p>3 benefits and associated medical records?</p> <p>4 A I'm not sure of that.</p> <p>13 Q Did you ask Mr. Smith about any</p> <p>14 discussions or debates he had with any other</p> <p>15 members of the board about Mr. Cloud's case?</p> <p>16 A I did not ask that question.</p> <p>17 Q Did you ask Mr. Smith whether he had</p> <p>18 any conversations with Mr. Reynolds or Ms. Smith</p> <p>19 about Mr. Cloud's application and request for</p> <p>20 benefits?</p> <p>21 A I did not ask that question.</p> <p>22 Q Did you ask Ms. Smith whether he</p> <p>Page 44</p>
	<p>1 received any advice from any third party about</p> <p>2 Mr. Cloud's request for benefits?</p> <p>3 A I did not ask that question.</p> <p>13 Q So I will tell you that from</p> <p>14 Ms. Smith's deposition, she said she recalled maybe</p> <p>15 10, maybe 15 reclassification requests that she</p> <p>16 handled as a member of the committee.</p> <p>17 Does that sound fair from your</p> <p>18 knowledge and your recollection?</p> <p>19 A Is she stating that as ever under her</p> <p>20 capacity or in a yearly manner?</p> <p>21 Q I believe she said ever.</p> <p>22 A That could be a fair assessment. I</p> <p>Page 45</p>

<p>1 would say it's not common.</p> <p>21 Did you ask any of the board members</p> <p>22 who were in place at the time of Mr. Cloud's appeal</p> <p>Page 46</p>	<p>1 Q Did you ask any of the board members</p> <p>2 that were in place at the time of Mr. Cloud's</p> <p>3 appeal whether they personally know or knew</p> <p>4 Mr. Cloud?</p> <p>5 A I did not ask that question.</p> <p>6 Q Did that come up in any of the</p> <p>7 conversation?</p> <p>8 A No.</p> <p>7 Q Did you actually ask the questions of</p> <p>8 the board members?</p> <p>9 A I did not.</p> <p>Page 48</p>
<p>1 whether they had reviewed Mr. Cloud's lawsuit?</p> <p>2 A No, I did not.</p> <p>6 It's my understanding that</p> <p>7 Ms. Blackburn, Mr. Cass, and Mr. Philips were</p> <p>8 appointed by the NFL Management Council. Is that</p> <p>9 correct?</p> <p>10 A That's correct.</p> <p>11 Q Sam McCullum and Jeff Van Note and</p> <p>12 Robert Smith were appointed by the Players</p> <p>13 Association. Is that correct?</p> <p>14 A That's correct.</p> <p>Page 47</p>	<p>Page 49</p>

5 Q So are you saying that the questions
6 that you said were not asked, were not asked period
7 or you just personally didn't ask them?

8 A The original questions were not asked
9 by me, and I didn't do any follow-up questions.

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14 (Pages 50 - 53)

<p>12 Q When you're referencing the X file,</p> <p>13 are those the 860 pages of records that were</p> <p>14 produced through this portal by the Groom Law Firm</p> <p>15 on January 18, 2019?</p> <p>16 MR. JUNK: Mr. Dennie, this is Mike</p> <p>17 Junk. I'm sorry. I just want to clarify, like you</p> <p>18 said trying to get you through this. The X file</p> <p>19 this the Bates prefix used to designate documents</p> <p>20 that we produced to plaintiff. So with that</p> <p>21 understanding, that's what he's referring to. So</p> <p>22 I'll just leave it to you. I apologize. Go ahead.</p> <p style="text-align: right;">Page 62</p>	<p>1 your lips, so I may interrupt you. So I'm not</p> <p>2 trying to talk over you, it's just I can't see your</p> <p>3 mouth, so it's a little bit more difficult.</p> <p>4 A I understand.</p> <p>5 Q So I apologize because I have done</p> <p>6 that a few times already.</p> <p>7 Okay. Like I said, I just want to</p> <p>8 make sure I'm understanding what documents you</p> <p>9 understand those to be. You recall the X file</p> <p>10 being approximately 860 pages of record?</p> <p>11 A No. I believe the X file is well</p> <p>12 over that. It's 1,500, or so, pages if I'm not</p> <p>13 mistaken.</p> <p>14 Q Okay. Fair enough.</p> <p>15 So as we've gone through this, you've</p> <p>16 indicated that you have looked at the line of</p> <p>17 questions that are being asked on the 30(b)(6)</p> <p>18 request, the original complaint filed by Mr. Cloud</p> <p>19 in this case, the administrative record and the X</p> <p>20 file that was produced in this lawsuit by the Groom</p> <p>21 Firm. Is that correct?</p> <p>22 A That's correct.</p> <p style="text-align: right;">Page 64</p>
<p>1 MR. DENNIE: No, I get the Bates</p> <p>2 label reference, but I'm just trying to make sure</p> <p>3 that I'm understanding where they came from.</p> <p>4 BY MR. DENNIE:</p> <p>5 Q So you're looking at Deposition</p> <p>6 Exhibit 11, which is an e-mail from Hannah Coffman</p> <p>7 to Michael Cloud on January 18, 2019. Is that</p> <p>8 right?</p> <p>9 A Yes, it is.</p> <p>10 Q And I will submit to you that there</p> <p>11 were records produced to Mr. Cloud on that date</p> <p>12 that were 860 pages of records. Were you involved</p> <p>13 in providing these records to the Groom Law Firm?</p> <p>14 A I don't recall if I assisted.</p> <p>15 Q Okay. I just wanted to make sure --</p> <p>16 I'm sorry, go ahead. I didn't mean to cut you off.</p> <p>17 A No, that's correct, I don't recall</p> <p>18 providing something here.</p> <p>19 Q I will apologize to you, Mr. Vincent,</p> <p>20 when we're wearing the masks it's a little bit</p> <p>21 easier for me to interrupt you because when you</p> <p>22 pause for a little longer than normal, I can't see</p> <p style="text-align: right;">Page 63</p>	<p>1 Q As it pertains to the 30(b)(6)</p> <p>2 questions, there was an exhibit that was compiled</p> <p>3 that contains notes, and potentially other</p> <p>4 documents, that you reviewed in preparation for</p> <p>5 answering the 30(b)(6) topics, correct?</p> <p>6 A Do you mind repeating that for me?</p> <p>7 Q Sure. No problem.</p> <p>8 As it pertains to that category</p> <p>9 number one that I mentioned, your review of the</p> <p>10 30(b)(6) topics, there's been a binder that was</p> <p>11 compiled that you reviewed to help you in</p> <p>12 preparation to answer the 30(b)(6) questions,</p> <p>13 correct?</p> <p>14 A Correct.</p> <p>15 Q In the administrative record, I just</p> <p>16 want to make sure that we're talking about the same</p> <p>17 thing and we're not speaking separately. If you</p> <p>18 will flip for Exhibit 7. I want you to let me know</p> <p>19 if Exhibit 7 is what you're referring as the</p> <p>20 administrative record.</p> <p>21 A Yes. This looks to be the</p> <p>22 administrative record, Exhibit 7.</p> <p style="text-align: right;">Page 65</p>

1 Q Okay. So Exhibit 7 is Bates labeled
2 CLOUD-AR-0001 through CLOUD-AR-529, correct?
3 A That is correct.
4 Q And that's -- when you refer to the
5 administrative record, Exhibit 7 is what you're
6 referring to, correct?
7 A That's correct.

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Page 67

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18 (Pages 66 - 69)

	<p>8 Q Is it fair to say all of the</p> <p>9 questions that were asked of the board members were</p> <p>10 yes-or-no questions?</p> <p>11 A Yes.</p>
Page 78	Page 80
Page 79	Page 81

<p>Page 82</p>	<p>6 Q They didn't ask members of the board 7 whether they reviewed the decision letter before it 8 went sent out. Is that right? 9 A That was not a line of questions, no. 10 Q You didn't ask the board whether they 11 provided any input on the decision letter, right? 12 A That's correct, we didn't ask that 13 question in this line of questioning. 14 Q You didn't ask if the board made any 15 changes to the decision letter, right? 16 A We did not ask that question, no.</p> <p>Page 84</p>
<p>Page 83</p>	<p>17 BY MR. DENNIE: 18 Q Go to Exhibit 6. 19 A I'm sorry. Can you repeat that? 20 Q Sure. Take a look at Exhibit 6. 21 A I have Exhibit 6. I have the 22 November 23, 2016 letter open.</p> <p>Page 85</p>

<p>1 Q Okay. This is the decision that was 2 sent out relating to Mr. Cloud's reclassification 3 appeal, correct? 4 A That is correct. 5 Q This is the decision made by the 6 board, correct? 7 A That is correct. 8 Q Have you seen any e-mails or 9 correspondence from any of the board members where 10 they provided any discussion or words to be 11 included in Deposition Exhibit 6? 12 A No, not that I'm aware of. 13 Q As you sit here today, you can't 14 confirm whether any members of the board actually 15 read this decision before it came out, correct? 16 A Before it was sent to Mr. Cloud? 17 Q Correct. 18 A That is correct, I can't confirm 19 that. 20 Q And you would agree that the Groom 21 Firm wrote this letter, right? 22 A They assisted the Plan office in</p> <p style="text-align: right;">Page 86</p>	<p>1 Q Okay. And Linda Johnston is just an 2 administrative assistant. She didn't provide any 3 of the language set forth in Deposition Exhibit 6, 4 did she? 5 A Not that I'm aware of, no. 6 Q Wasn't it the practice in these 7 applications for disability benefits that the Groom 8 Firm would prepare the decision without 9 communicating with the members of the committee? 10 MR. MEEHAN: Objection. No 11 foundation. 12 Go ahead. 13 THE WITNESS: Well, we have -- we're 14 not talking about Exhibit 6 anymore? 15 BY MR. DENNIE: 16 Q I'm going to -- just follow my 17 question -- my first one is about the committee. 18 So I'll ask it again. 19 As it pertains to decisions for 20 disability benefits that are decided by the 21 committee, the Groom Firm would prepare those 22 written letters without communication with members</p> <p style="text-align: right;">Page 88</p>
<p>1 writing the decision letter. 2 Q Okay. Tell me who else helped write 3 this letter. If they assisted, tell me who else 4 wrote it. 5 A When we received the letter, 6 administration will format the letter, make sure 7 everything is correct and then send it out to the 8 player. 9 Q Who did that for Mr. Cloud's, as it 10 pertains to Deposition Exhibit 6? 11 A I wouldn't be able to say for sure, 12 but it may have been Belinda Johnston at the Plan 13 office or executive admin. 14 Q Linda what? 15 A Johnston, J-O-H-N-S-T-O-N. 16 Q Okay. And you said Linda Johnston is 17 the administrative assistant? 18 A Yes. Yes, sir. 19 Q You would agree from your experience 20 working with lawyers that Deposition Exhibit 6 is 21 clearly prepared by a lawyer, correct? 22 A Correct.</p> <p style="text-align: right;">Page 87</p>	<p>1 of the committee, correct? 2 A The committee would make a decision 3 and then the decision letters would be created. 4 Q So my question is little bit 5 different. But I appreciate your response. It's a 6 little bit differ, so follow me for a second. 7 The committee makes a decision, 8 right? 9 A Yes. 10 Q The Groom Firm writes that decision 11 and puts it into a decision letter, correct? 12 MR. MEEHAN: Objection to the form. 13 Asked and answered. 14 Go ahead. 15 THE WITNESS: Correct. 16 BY MR. DENNIE:</p> <p style="text-align: right;">Page 89</p>

1 A At the meeting itself, the final
2 decision is made.

3 Q Is there any e-Ballot that's
4 conducted by the board?

5 A It's in the minutes by the board for
6 their decision.

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Page 96

7 Q Okay. So if we flip to
8 CLOUD-MIN-006, and I'll just read it to you, so
9 tell me if I'm wrong. It says, "To: Michael
10 Cloud. On review of appeal from earlier decision
11 to award Inactive A total permanent disability
12 benefits, effective May 1, 2014, denied application
13 for reclassification to the Active Football
14 category failure to meet the requirement for Plan
15 section 5.7(b)."

16 Did I read that correctly?

17 A Yes, you did.

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Page 97

25 (Pages 94 - 97)

13 BY MR. DENNIE:

14 Q As it pertains to Exhibit 19 and
15 those questions, when you were listening to the
16 questions being asked by the Groom Firm, was there
17 ever any discussion about whether the board
18 discussed Mr. Cloud's application prior to casting
19 their vote?

20 A We did not ask that line of
21 questioning. There was no response like that.

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26 (Pages 98 - 101)

<p>2 Q And I take it, from looking at</p> <p>3 Deposition Exhibit 19, there was no question asked</p> <p>4 of the board members specifically what the</p> <p>5 information they gave to the benefits office about</p> <p>6 Mr. Cloud's case prior to the drafting of this</p> <p>7 letter. Is that correct?</p> <p>8 A That's correct, that question was not</p> <p>9 asked.</p> <p>10 Q And correct me if I'm wrong, but</p> <p>11 there's also no information or -- requested from</p> <p>12 any of the board members in the conversations that</p> <p>13 were had yesterday where they were asked any input</p> <p>14 that was requested of them by the Groom Firm prior</p> <p>15 to the drafting of Deposition Exhibit 6. Is that</p> <p>16 right?</p> <p>17 A Yes, that question was not asked.</p>	

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27 (Pages 102 - 105)

	<p>13 Q You testified, and correct me if I'm</p> <p>14 wrong, but there's no evidence or information that</p> <p>15 the board actually reviewed Exhibit 6 before it was</p> <p>16 sent out, right?</p> <p>17 A That is my understanding, yes.</p> <p>18 Q And you would agree that</p> <p>19 Ms. Blackburn and Mr. Cass both have legal</p> <p>20 training. Is that right?</p> <p>21 A That's my understanding, yes.</p> <p>Page 106</p>
	<p>Page 108</p> <p>Page 107</p> <p>Page 109</p>

<p>22</p>	<p>?</p> <p>11 Q So let me ask you a couple of</p> <p>12 questions and you tell me if I'm wrong.</p> <p>13 Earlier you testified you were not</p> <p>14 aware of the board ever reviewing Exhibit 6 before</p> <p>15 it was sent to Mr. Cloud, correct?</p> <p>16 A That's correct.</p> <p>Page 110</p>
<p>Page 111</p>	<p>2 Are you aware or have any evidence</p> <p>3 that the board reviewed exhibit -- I just butchered</p> <p>4 my words. Let me try it again.</p> <p>5 Are you aware or have any evidence</p> <p>6 that shows that the board reviewed Exhibit 6 after</p> <p>7 it was sent out?</p> <p>8 A I do not have that evidence, no.</p> <p>Page 113</p>

29 (Pages 110 - 113)

<p>1</p> <p>7 Q Let's go one by one.</p> <p>8 As it pertains to requests to receive</p> <p>9 Active A football benefits, do you know the numbers</p> <p>10 that was granted versus the ones that were denied?</p> <p>11 A I do not know the numbers denied.</p> <p>12 And I can tell you based off of March 2021, how</p> <p>13 many players are receiving Active football.</p>	

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31 (Pages 118 - 121)

<p>14 Q Thirty-two players are receiving how 15 many requests for Active A benefits have been 16 denied? 17 A I don't know have that answer. 18 Football --</p> <p>Page 122</p>	<p>20 Q Are there any spreadsheets or other 21 data that you all keep on total and permanent 22 disability claims that have been granted or denied?</p> <p>Page 124</p>
<p>Page 123</p>	<p>1 A Historically, there is a database 2 that keeps track of a case as it goes through. And 3 then once a decision is made, approval or denial, 4 that's acknowledged, it would have to be a -- it's 5 considered a data dump onto a chart and then it has 6 to be configured to provide that type information. 7 A database has not existed for forever -- 8 Q So there is a data -- I'm sorry. Go 9 ahead. 10 A I mean if you're looking for from the 11 inception of T&P, I wouldn't say that that sort of 12 database exists. The database is relatively newer 13 in the sense that since it's after 2000 -- I 14 wouldn't even be able to say the exact year, but 15 it's after 2010, well after 2010. 16 Q Okay. So sometime after 2010, a 17 database was created that would show the number of 18 claims that are granted and the number of claims 19 that are denied for total and permanent benefits, 20 correct? 21 A Yes, if you download the data, that 22 should be retrievable.</p> <p>Page 125</p>

<p>1 Q And that's a document that can be</p> <p>2 easily produced in a lawsuit, correct?</p> <p>3 MR. MEEHAN: Well, Objection to form.</p> <p>4 Can you explain that again,</p> <p>5 Mr. Vincent.</p> <p>6 THE WITNESS: Yes.</p> <p>7 So I wouldn't be able to do it</p> <p>8 right now. For example, we would have to go</p> <p>9 into the database, look at the fields to</p> <p>10 determine, you know, what the request is. And</p> <p>11 then from there, it would go into a massive Excel</p> <p>12 sheet and then it would have to be filtered, for</p> <p>13 example, approvals and denials. But that would</p> <p>14 be a method to kind of get it at the end, to have</p> <p>15 an overall scope.</p> <p>16 BY MR. DENNIE:</p> <p>17 Q But you could run a query in your</p> <p>18 database and retrieve the requested information,</p> <p>19 correct?</p> <p>20 MR. MEEHAN: Objection to the form.</p> <p>21 THE WITNESS: We should be able to</p> <p>22 run a query to get that type of information.</p> <p style="text-align: right;">Page 126</p>	<p>1 and capricious. And I don't know why we're still</p> <p>2 fighting that. It's the same request that we</p> <p>3 talked about with the director's report and the</p> <p>4 counsel report. The reason we don't know about</p> <p>5 this stuff is because you're not giving us</p> <p>6 information that's being requested.</p> <p>7 So you have the data, so you've got</p> <p>8 to give the data. I mean, here we are in</p> <p>9 discovery depositions two weeks before the</p> <p>10 discovery deadline expires and I'm learning about</p> <p>11 records for the first time. I just ask you to</p> <p>12 meet your duty under the rule.</p> <p>13 We'll have to add that to our</p> <p>14 motion to compel. This is our conferring 37, 57,</p> <p>15 and 58 of the request. If you have responsive</p> <p>16 information, you need to produce it. You can get</p> <p>17 back to me about when it's going to be produced.</p> <p>18 We've requested the director's and counsel report</p> <p>19 prior to this deposition. It was not provided,</p> <p>20 so we're apparently going to have to demand and</p> <p>21 request more stuff. But you can get back to me.</p> <p>22 MR. MEEHAN: Okay. Since you want to</p> <p style="text-align: right;">Page 128</p>
<p>1 MR. DENNIE: Counsel, was that</p> <p>2 something that you guys can produce? That's the</p> <p>3 first time that we heard that, too.</p> <p>4 MR. MEEHAN: Well, as you know, we</p> <p>5 think that has nothing whatsoever to do this</p> <p>6 lawsuit, so you can send a request for it and we</p> <p>7 will take it under advisement and we'll try to meet</p> <p>8 and confer with you but as I understand --</p> <p>9 MR. DENNIE: We already have.</p> <p>10 MR. MEEHAN: It's no -- there's been</p> <p>11 no meeting and conferring on that topic. As you</p> <p>12 just said, that came up a moment ago. That's brand</p> <p>13 new. We've had no discussion on it at all. But as</p> <p>14 I understand the witness, he is talking about it is</p> <p>15 a process that he could follow to create something.</p> <p>16 And that sounds like a lot of work to me. So I</p> <p>17 will have to get a better understanding from the</p> <p>18 witness. And I would like to have that</p> <p>19 understanding from you off this record as to what</p> <p>20 the relevance to this case it could possibly have.</p> <p>21 So that's a discussion that we would need to have.</p> <p>22 MR. DENNIE: As you know, arbitrary</p> <p style="text-align: right;">Page 127</p>	<p>1 put it on the record, I'll just say briefly what</p> <p>2 took place just now is not a meet and confer. I do</p> <p>3 not know whether production of that information is</p> <p>4 something that will take five minutes or five</p> <p>5 years. I have no insight on it. Now is not the</p> <p>6 time for me to have that discussion with</p> <p>7 Mr. Vincent.</p> <p>8 The director's and counsel reports,</p> <p>9 we had no meet and confer of any nature. You</p> <p>10 made your request, we've communicated that we</p> <p>11 would get back to you. You filed a motion with</p> <p>12 no meet and confer on that topic. I don't want</p> <p>13 to belabor this deposition. We're not going to</p> <p>14 agree right now.</p> <p>15 MR. DENNIE: What are you talking</p> <p>16 about?</p> <p>17 MR. MEEHAN: I do not wish to belabor</p> <p>18 this --</p> <p>19 MR. DENNIE: We talked about it on</p> <p>20 the 5th.</p> <p>21 MR. MEEHAN: -- deposition -- we did</p> <p>22 not.</p> <p style="text-align: right;">Page 129</p>

<p>1 MR. DENNIE: Anyway, it doesn't</p> <p>2 matter. Let's move on.</p> <p>3 MR. MEEHAN: No, sir.</p> <p>4 MR. DENNIE: We are wasting time. I</p> <p>5 don't want to hear that.</p> <p>6 MR. MEEHAN: Sir --</p> <p>7 BY MR. DENNIE:</p> <p>8 Q Mr. Vincent, how long would it take</p> <p>9 you to run that database query?</p> <p>10 MR. MEEHAN: Sir, he is not going to</p> <p>11 answer that question until I finish my statement.</p> <p>12 Please don't interpret me.</p> <p>13 I have said several times I do not</p> <p>14 wish to belabor this deposition. We need to meet</p> <p>15 and confer. If you wish to ask him questions</p> <p>16 now, go right ahead. But we have tried to work</p> <p>17 with you and you have never stated, to my</p> <p>18 understanding, why it is relevant to know that</p> <p>19 the --</p> <p>20 MR. DENNIE: I just told you it's not</p> <p>21 arbitrary and capricious as the application. And</p> <p>22 that is an absolute easy one. So okay, that's</p> <p style="text-align: right;">Page 130</p>	<p>1 Do your best, sir.</p> <p>2 THE WITNESS: If there's a time</p> <p>3 period provided, you would have to download the</p> <p>4 information, it goes on through the Excel sheet.</p> <p>5 And then have to filter out of cases by player.</p> <p>6 And then, you know, you have to audit to make sure</p> <p>7 that the correct information was provided. It</p> <p>8 would take time. It would not be -- I wouldn't do</p> <p>9 it right now and give it to you right now, if</p> <p>10 that's the question.</p> <p>11 BY MR. DENNIE:</p> <p>12 Q That is not my question.</p> <p>13 A No.</p> <p>14 Q I just want to know in your</p> <p>15 experience what time would it take. So let me go</p> <p>16 back a step. And maybe I misunderstood what you</p> <p>17 your response was.</p> <p>18 So was this database created in 2010</p> <p>19 for all claims that have ever been filed or are</p> <p>20 they only claims going forward from 2010-ish?</p> <p>21 A Going forward. I would be more</p> <p>22 comfortable saying around 2011 to 2013, just as a</p> <p style="text-align: right;">Page 132</p>
<p>1 fine. We'll move on. If you don't want to produce</p> <p>2 the record, we'll take that up with the Court. We</p> <p>3 talked about the other one at least four times.</p> <p>4 BY MR. DENNIE:</p> <p>5 Q Mr. Vincent --</p> <p>6 MR. MEEHAN: Mr. Dennie, I am not</p> <p>7 refusing anything. I am saying to you --</p> <p>8 MR. DENNIE: Please stop.</p> <p>9 MR. MEEHAN: I am saying to you we</p> <p>10 have not met and conferred. Now, go ahead with</p> <p>11 your deposition. And we do whatever is</p> <p>12 appropriate. Please proceed.</p> <p>13 BY MR. DENNIE:</p> <p>14 Q How long would it take to run the</p> <p>15 query to determine the total and permanent</p> <p>16 disability benefits that have been granted or</p> <p>17 denied?</p> <p>18 MR. MEEHAN: From what time period?</p> <p>19 BY MR. DENNIE:</p> <p>20 Q Answer the question.</p> <p>21 MR. MEEHAN: Objection to the form.</p> <p>22 Time period is ambiguous.</p> <p style="text-align: right;">Page 131</p>	<p>1 note. But yes, it is for claims from the time the</p> <p>2 system was created forward.</p> <p>3 Q Okay. So the time period we're</p> <p>4 talking about is somewhere after 2010, maybe 2011,</p> <p>5 maybe 2012. Is that correct?</p> <p>6 A Yes. It was a system change, and</p> <p>7 then we started putting information into that</p> <p>8 system as the case went on.</p> <p>9 Q Okay. So you understood that when</p> <p>10 I'm asking you questions, it's from the date the</p> <p>11 system was created to present, correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. So with that in mind, whenever</p> <p>14 the system was created, whether it was '11, '12,</p> <p>15 whenever, to the present, running the query to</p> <p>16 determine what total and permanent benefits have</p> <p>17 been granted and denied, how long would that take?</p> <p>18 A I would need several days just to</p> <p>19 make sure it's correct information that's given to</p> <p>20 you.</p> <p>21 Q Several days to run a database query</p> <p>22 that's prepared on an Excel spreadsheet?</p> <p style="text-align: right;">Page 133</p>

<p>1 A I just want to make sure --</p> <p>2 MR. MEEHAN: Objection to the form.</p> <p>3 Misstates his testimony. And, Mr. Dennie, I know</p> <p>4 you don't realize it, but your tone has changed</p> <p>5 markedly. So please show respect in your tone, not</p> <p>6 just on the written transcript. Thank you.</p> <p>7 MR. DENNIE: Okay. Please stop.</p> <p>8 That's not an objection. I'm just asking the guy a</p> <p>9 question. Please stop trying to make me look bad</p> <p>10 on the transcript for no reason.</p> <p>11 BY MR. DENNIE:</p> <p>12 Q Sir, I am just trying to get an</p> <p>13 understanding. I've run many -- when I worked on</p> <p>14 college campuses, I ran many queries that are</p> <p>15 similar to what you're talking about that has a lot</p> <p>16 of information and it certainly never took days.</p> <p>17 So I'm just trying to get an understanding for why</p> <p>18 you think that it would take days to run a query to</p> <p>19 determine whether T&P benefits applications were</p> <p>20 grant or denied.</p> <p>21 A The system uses players by</p> <p>22 application types under one umbrella. So if</p> <p style="text-align: right;">Page 134</p>	<p style="text-align: right;">Page 136</p>
<p>1 someone applied for line of duty and T&P, for</p> <p>2 example, we would have to tease that out. That's</p> <p>3 where some of the extra work comes in. It's not,</p> <p>4 you know, John Smith applies for line of duty and</p> <p>5 John Smith applied for T&P, then we have just the</p> <p>6 T&P that goes forward, for example, we would have</p> <p>7 to do a little teasing out to make sure that we</p> <p>8 give the correct information. That's where it</p> <p>9 would just take some time, just making sure that</p> <p>10 you have the right information.</p> <p>11 Q How many T&P benefits applications</p> <p>12 have been filed since the database was created?</p> <p>13 A I don't have that answer.</p> <p>14 Q Give me an estimate.</p> <p>15 A I'm not sure honestly. No idea.</p> <p>16 Easily hundreds, I mean it's not thousands, since</p> <p>17 the inception.</p> <p>18 Q Okay. So there have been hundreds of</p> <p>19 applications, not thousands, that has been filed</p> <p>20 since the database has began, correct?</p> <p style="text-align: right;">Page 135</p>	<p style="text-align: right;">Page 137</p>

14 Q And as we sit here today, you can't
15 tell me how many claims that were Active A benefits
16 have been denied. Is that correct?

17 A That's correct, I cannot give you the
18 decisions on Active -- well, let's just say total
19 and permanent disability as a whole, since the
20 category is determined by the committee or the
21 board.

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18 Q Can you tell me how many claims for
19 Inactive A benefits have been denied?

20 A I do not have that answer, no.

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<p>3 Is there a query that can be run to</p> <p>4 determine whether Inactive A benefits have been</p> <p>5 granted?</p> <p>6 A Yes, there would be a category under</p> <p>7 total and permanent disability.</p> <p>8 Q So in the query in the database, you</p> <p>9 could take a determination if the player received</p> <p>10 Inactive A or Active football benefits, correct?</p> <p>11 A Yes.</p> <p>Page 142</p>	<p>Page 144</p>
<p>?</p> <p>Page 143</p>	<p>19 Q So the number of reclassification</p> <p>20 requests from Inactive A to Active football</p> <p>21 benefits is not a large number, correct?</p> <p>22 A I would agree with that, yes.</p> <p>Page 145</p>

<p>15 Q There's not a lot of requests out</p> <p>16 there, as you've acknowledged, so it's not going to</p> <p>17 be as a voluminous review of documentation to come</p> <p>18 up with how many reclassification decisions for T&P</p> <p>19 benefits have been granted or denied. Is that</p> <p>20 right?</p> <p>21 A That would be a fair statement. It</p> <p>22 could be 10, 15, it could be less than a hundred,</p> <p>Page 146</p>	<p>Page 148</p>
<p>1 but it would -- but I don't want to give a</p> <p>2 definitive number of how many there were. It's</p> <p>3 been a some time.</p> <p>t?</p> <p>Page 147</p>	<p>Page 149</p>

<p>4 Q Do you know whether more benefits 5 applications under the T&P umbrella are granted or 6 denied? 7 A I wouldn't be able to confirm that 8 right now.</p> <p>21 Q The only way for us to get those is 22 going to be through that database that you talked Page 158</p>	<p>1 reclassifications appeals have been granted? 2 A I do not know that answer. 3 Q Who are the beneficiaries under the 4 Plan? 5 A Who are the beneficiaries? The 6 players.</p> <p>,</p> <p>Page 160</p>
<p>1 about before, correct? 2 MR. MEEHAN: Objection. No 3 foundation. 4 THE WITNESS: That would be 5 information in that database.</p> <p>13 As we sit here today, you can't tell 14 me whether T&P benefits applications are granted or 15 denied two to one, three to one, four to one, five 16 to one? You have no clue. Is that right? 17 A That's correct. 18 Q Do you know how many of the T&P 19 reclassifications benefits appeals have been 20 granted? 21 A I cannot confirm that either. 22 Q Do you know a percentage of the T&P Page 159</p>	<p>Page 161</p>

<p>10 Q Okay. So you would agree that the 11 players are the beneficiaries under the Plan, 12 right? 13 A Yes. 14 Q Who are the fiduciaries of the Plan? 15 A Trustees. 16 Q Who are the trustees? 17 A At the time of Michael Cloud's case; 18 Katie Blackburn, Ted Philips, Dick Cass, Jeff Van 19 Note, Robert Smith. Who am I forgetting here? 20 Q Sam McCullum? 21 A Sam McCullum. I apologize. Yes. 22 Q So the board members are who you're</p> <p>Page 162</p>	<p>Page 164</p>
<p>1 referring to as the trustees, correct? 2 A Yes, sir.</p> <p>13 Do the board members have a fiduciary 14 role or relationship to the players? 15 A They have a fiduciary role, yes.</p> <p>22</p> <p>Page 163</p>	<p>Page 165</p>

Page 166	Page 168
<p>7 Q Would you agree that they have a</p> <p>8 fiduciary role and the best interest of the</p> <p>9 players?</p> <p>10 A Yes.</p>	Page 169

<p>7 Q Of the Active football benefits that 8 have been provided, how many of those are related 9 to concussion symptoms or syndrome? 10 A I don't have an answer to that at 11 all.</p> <p>--</p> <p>22 during the quarterly board meeting, there's</p> <p style="text-align: right;">Page 170</p>	<p>1 have been? 2 A Maybe with the director of plan book. 3 It goes over the amounts, it may have been the 4 retirement board discussion. I couldn't confirm 5 where that discussion, what happens. But that's -- 6 Q So let me -- I didn't really hear the 7 first part. You said something about a director's 8 plan or something to that effect. What is that? 9 A Well, when the director of the Plan 10 Benefit Office reports on the allocation of money 11 that goes out on disability, it is acknowledged who 12 is receiving the benefit -- I'm sorry, the number 13 of players receiving a certain benefit and which 14 ones. 15 Q Okay. And for some reason I'm having 16 a little more trouble hearing you right now, so, I 17 mean, if you could speak up a little bit. 18 A Yeah. 19 Q And let me tell you what I heard and 20 tell me if I'm wrong. Did you say that that's 21 something that the director of the Plan stands up 22 and says or is that a document that's presented?</p> <p style="text-align: right;">Page 172</p>
<p>1 acknowledgment of how many players are receiving a 2 benefit and which ones at that time. 3 Q Would that be in the minutes? 4 A Would it be in the minutes? I can't 5 confirm that. I believe it would be but... 6 Q Okay. If you'll flip to Exhibit 12. 7 A Okay. 8 Q Do you see that indicated anywhere? 9 MR. MEEHAN: Hang on one second. He 10 needs to get the exhibit binder. 11 MR. DENNIE: Okay. 12 MR. MEEHAN: It's just a little 13 further down the table. 14 THE WITNESS: Thank you. 15 MR. MEEHAN: Okay. He's got it. 16 THE WITNESS: No, that is not in the 17 minutes provided to you -- or by you, I should say. 18 BY MR. DENNIE: 19 Q Those were provided to me, not by me, 20 just so we're clear. 21 A Okay. 22 Q So where in the minutes should that</p> <p style="text-align: right;">Page 171</p>	<p>1 That's why where I didn't hear you. 2 A Both. There is a document that has 3 the amounts, the number of players, and it's also 4 expressed during the meeting itself. 5 Q Is that the director's report? 6 A Yes. Sorry if I called it director's 7 plan. 8 Q So the director's -- I'm sorry. I 9 cut you off. Can you say that again? 10 A Yeah. I called it the director plan 11 book. It would be the director's report. 12 Q Okay. So when you say director's 13 plan book and director's report, those are the same 14 thing, correct? 15 A Yes, plan director's report. 16 Q If I heard you correctly, those are 17 prepared quarterly for the board meeting. Is that 18 right? 19 A That's correct.</p> <p style="text-align: right;">Page 173</p>

<p>16 You would agree that there are</p> <p>17 executive sessions that the board of directors hold</p> <p>18 to discuss disability applications. Is that right?</p> <p>19 A Yes. I would say the Players</p> <p>20 Association meets with themselves, as would council</p> <p>21 meets with themselves to discuss cases.</p> <p>22 Q Did you ask any of the members of the</p> <p style="text-align: right;">Page 182</p>	<p style="text-align: right;">Page 184</p>
<p>1 board about any executive decisions they held as it</p> <p>2 pertains to Mr. Cloud's application?</p> <p>3 A I did not. And I do not recall</p> <p style="text-align: right;">Page 183</p>	<p style="text-align: right;">Page 185</p>

Page 226	Page 228
1	<div>15 Q You would agree that the Plan office</div> <div>16 directed Mr. Cloud to see Dr. Mandelbaum, correct?</div> <div>17 A For his line of duty examination,</div> <div>18 yes, sir.</div> <div>19 Q So if your counsel e-mailed me and</div> <div>20 said that Mr. Cloud was directed to Dr. Mandelbaum</div> <div>21 by someone other than the Plan, that would be</div> <div>22 incorrect, right?</div> <div>Page 227</div> <div>Page 229</div>

1 A Correct, Rose Mary Eves was a Plan
2 coordinator -- I'm sorry, worked with the Plan
3 office to schedule examinations.

4 Q You would agree that Mr. Cloud is
5 entitled to any records from his evaluation from
6 Dr. Mandelbaum, correct?

7 A Yes, sir.

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<p>9 What are the sources of medical</p> <p>10 records for players who are submitting applications</p> <p>11 for disability benefits?</p> <p>12 A Multiple sources. If the player has</p> <p>13 his own personal physicians, they can submit those</p> <p>14 records any time after football -- before football.</p> <p>15 And when I say "football," I'm talking about NFL.</p> <p>16 And any other CFL, anything like that, they can</p> <p>17 submit those records. When it comes to NFL, the</p> <p>18 player can contact the last club that they played</p> <p>19 for and they should have their most recent team</p> <p>20 records, as we've been calling them, team records.</p> <p>21 Q What else?</p> <p>22 A There is a repository, from my</p> <p style="text-align: right;">Page 234</p>	<p style="text-align: right;">Page 236</p>
<p>1 understanding, I believe it's called EMR</p> <p>2 repository. That came into play after the 2011</p> <p>3 CBA. And from my understanding, the players would</p> <p>4 have had to have been playing in 2011 to be part of</p> <p>5 that system and forward.</p> <p>6</p> <p style="text-align: right;">Page 235</p>	<p style="text-align: right;">Page 237</p>

	<p>16 Q And you would agree that ERISA 17 requires the Plan to produce records in its 18 possession or control if requested by a player. Is 19 that right? 20 MR. MEEHAN: Objection. Calls for a 21 legal conclusion. 22 THE WITNESS: Yes, sir.</p> <p>Page 266 Page 268</p>
	<p>1 MR. DENNIE: It's in his affidavit, 2 so I guess I could make the same objection. 3 BY MR. DENNIE: 4 Q You can answer. 5 A Yes, a request would be given -- if a 6 player requests his records and we have them on 7 file, we would hand them over. 8 Q And those requested records includes 9 records maintained by your Plan physicians, right? 10 A Yes, sir. 11 Q You would expect a player should have 12 access to all of the records from Plan physicians, 13 correct? 14 A Any record that we have on file, we 15 would hand over to the player, yes, sir.</p> <p>Page 267 Page 269</p>

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15 You would agree that the Department
16 of Labor regulations require the Plan to turn over
17 medical documents that are requested by a player,
18 correct?

19 A Yes, sir.

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	<p>16 Q Are you aware of any training, 17 whether you were there or not, where the board was 18 trained on the Plan document? 19 A I also cannot confirm.</p> <p>Page 290</p>
	<p>7 Q So my question was more -- the second 8 set of questions, and tell me if you didn't 9 understand it, but your awareness of whether you 10 were there or not, that the board was trained on 11 the Plan document? 12 A Am I aware if they were? I'm not 13 aware if they were or not.</p> <p>Page 291</p>

6 Q Are you aware of any training that
7 the board received pertaining to neurological
8 issues incurred by former NFL players?
9 A No, sir.

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	<p>1 Q Just for clarity of the record, in</p> <p>2 2020, Inactive A benefits were 135,000, and the</p> <p>3 Active football benefit was 265,000. Is that</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q What was the difference in the</p> <p>7 amounts of the Inactive A versus Active football</p> <p>8 benefits in 2019?</p> <p>9 A I believe they were the same amount,</p> <p>10 sir.</p> <p>11 Q So, again, that's 135,000 for</p> <p>12 Inactive A and 265,000 for Active football</p> <p>13 benefits?</p> <p>14 A Yes, sir.</p> <p>15 Q Same question for 2018.</p> <p>16 A Same response; 135 for Inactive A,</p> <p>17 and 265 for Active football.</p> <p>18 Q How about 2017?</p> <p>19 A Same response, sir.</p> <p>20 Q How about 2016?</p> <p>21 A I believe it was 120 -- 120,000 for</p> <p>22 Inactive A. And I don't recall the exact amount</p> <p style="text-align: right;">Page 320</p>
<p>12 Q Do you know what the difference</p> <p>13 between Inactive A and Active football benefits are</p> <p>14 from 2021?</p> <p>15 A Yes, sir.</p> <p>16 Q What's that amount?</p> <p>17 A Inactive A is 135,000 a year,</p> <p>18 Inactive football is 265,000 a year.</p> <p>19 Q What was the difference in the two</p> <p>20 amounts in 2020?</p> <p>21 A I believe they were the same amount,</p> <p>22 sir.</p> <p style="text-align: right;">Page 319</p>	<p>1 for Active football, I believe it was 250,000, sir,</p> <p>2 but I may be off.</p> <p>3 Q How about 2015?</p> <p>4 A It would have been the same as 2016.</p> <p>5 Q So that's 120 for Inactive A and</p> <p>6 250,000 for Active football benefit?</p> <p>7 A Yes.</p> <p>8 Q What about 2014?</p> <p>9 A Same amount, sir.</p> <p>10 Q And just so the record's clear, the</p> <p>11 amount would be 120,000 for Inactive A and 250,000</p> <p>12 for Active football benefits, correct?</p> <p>13 A Yes, sir.</p> <p>14 Q What about 2013?</p> <p>15 A I believe it's the same. But I'm</p> <p>16 starting to get into territory that I don't have</p> <p>17 the numbers in front of me, if there were any</p> <p>18 changes in 2011 CBA that changed the amounts and</p> <p>19 there was schedule for those amounts.</p> <p>20 Q Okay. So once we get below 2014,</p> <p>21 you're not certain what the difference between</p> <p>22 Inactive A and Active football benefits are. Is</p> <p style="text-align: right;">Page 321</p>

<p>1 that correct?</p> <p>2 A Right. I believe between 2011 and --</p> <p>3 between '11 and '15, it was the 120,000 and</p> <p>4 250,000, and then 2016 had the increase. Prior to</p> <p>5 2011, was a different CBA, and I don't recall those</p> <p>6 amounts, sir.</p> <p>7 Q So let me just make sure I have down</p> <p>8 what I think you're saying. So from 2011 to 2016,</p> <p>9 Inactive A benefit is 120,000 and Active football</p> <p>10 benefits was 250,000, correct?</p> <p>11 A I believe that is correct.</p> <p>12 Q From 2017 to present, Inactive A</p> <p>13 benefits is 135,000, and Active football benefits</p> <p>14 is 265,000, correct?</p> <p>15 A For the 2011 -- I believe it was</p> <p>16 between 2011 and 2015. In the 2016 year, is the</p> <p>17 change over increase. So 2016 to present is the</p> <p>18 135, 265 amounts.</p> <p>19 Q Okay. So let me go through it again.</p> <p>20 So from 2011 to 2015 --</p> <p>21 A Yes.</p> <p>22 Q -- the Inactive A benefit is 120,000</p> <p style="text-align: right;">Page 322</p>	<p style="text-align: right;">Page 324</p>
<p>1 and the Active football is 250,000, correct?</p> <p>2 A I believe so.</p> <p>3 Q So 2016 to present, the Inactive A</p> <p>4 benefit was 135,000, and the football Active</p> <p>5 football benefit was 265,000, correct?</p> <p>6 A Yes, sir.</p> <p>7 Q So if my math serves me correctly,</p> <p>8 the difference between the two from 2011 to 2021,</p> <p>9 is \$130,000, correct?</p> <p>10 A Yes, sir.</p> <p style="text-align: right;">Page 323</p>	<p style="text-align: right;">Page 325</p>

	<p>11 Q Okay. So what I just heard you say,</p> <p>12 you didn't come up with the definition of changed</p> <p>13 circumstances, correct?</p> <p>14 A That's correct, sir.</p> <p>15 Q You said the parties did, correct?</p> <p>16 A Yes, they interpret the Plan rules.</p> <p>17 Q Who from the parties sat down and</p> <p>18 came up with the definition of changed</p> <p>19 circumstances?</p> <p>20 A I'm not sure, sir.</p> <p>Page 334</p> <p>Page 336</p>
<p>7 BY MR. DENNIE:</p> <p>8 Q My question was not what you</p> <p>9 interpret the Plan to be saying. My question is:</p> <p>10 Is changed circumstance, as referenced in 5.7(b),</p> <p>11 defined anywhere in The Plan?</p> <p>12 A I do not see that in The Plan,</p> <p>Page 335</p>	<p>Page 337</p>

22

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5 Q Would you agree that it's important
6 that the committee and board provide the same
7 definition of clear and convincing in all cases?

8 A Yes, it needs to be clear and
9 convincing.

10 Q Would you agree that it's important
11 that the committee and the board provide the same
12 definition of changed circumstance in all cases?

13 A Between the committee and the board,
14 they should agree.

15 Q So is that yes?

16 A Yes, sir.

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86 (Pages 338 - 341)

<p>Page 342</p>	<p>Page 344</p> <p>1</p> <p>9 BY MR. DENNIE:</p> <p>10 Q So back to my question. Is there</p> <p>11 anyone other than the Groom Law Firm who can answer</p> <p>12 that question?</p> <p>13 MR. MEEHAN: Objection to the form.</p> <p>14 THE WITNESS: No, sir. I don't know</p> <p>15 who you can ask.</p> <p>Page 343</p>
	<p>Page 345</p>

<p>20 Q Is there any location that you can 21 direct me to where there are written 22 interpretations of how the language in The Plan</p> <p>Page 350</p>	<p>Page 352</p>
<p>1 documents have been applied? 2 A No, sir, I don't have anywhere to 3 point you to.</p> <p>Page 351</p>	<p>Page 353</p>

1	<p>13 BY MR. DENNIE:</p> <p>14 Q You're not aware of that circumstance</p> <p>15 because the letters are never submitted to the</p> <p>16 committee prior to being sent to the player,</p> <p>17 correct?</p> <p>18 A Correct, sir.</p>

14 Q And you testified earlier, and
15 correct me if I'm wrong, but a new concussion
16 symptom is a change in circumstance, correct?

17 MR. MEEHAN: Objection. Misstates
18 testimony.

19 THE WITNESS: It could be a change of
20 circumstances. It could.

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94 (Pages 370 - 373)

<p>17 BY MR. DENNIE: 18 Q Well, I guess what I'm trying to 19 understand, from the Plan perspective, you want the 20 board and the committee to interpret those terms 21 changed circumstance to mean the same thing, right? 22 A Yes, that's what we would like.</p> <p>Page 374</p>	<p>20 Q Sure. 21 Was the March 2nd, 2016 denial of 22 reclassification provided to the committee prior to</p> <p>Page 376</p>
<p>Page 375</p>	<p>1 it being sent out? 2 A I do not believe so, no. 3 Q That's just not the policy of the 4 Plan to give the people that decided the case the 5 opportunity to read the written decision before 6 it's sent to the player. Is that correct? 7 A Yes. 8 Q Flip over to Exhibit 6 for me. 9 A November 23rd, 2016 letter. 10 Q Is this the decision made by the 11 board on Mr. Cloud's reclassification request? 12 A Yes, sir. 13 Q Do you know who wrote this letter? 14 A I would say I believe this is drafted 15 by Groom Law Group when it came to our Plan office.</p> <p>22 Q Was Exhibit 6 submitted to the board</p> <p>Page 377</p>

95 (Pages 374 - 377)

<p>1 for review prior to being sent to Mr. Cloud?</p> <p>2 A No, sir, I do not believe that was</p> <p>3 the case.</p> <p>Page 378</p>	<p>Page 380</p>
<p>1</p> <p>Page 379</p>	<p>1 BY MR. DENNIE:</p> <p>2 Q My question was not about the Groom</p> <p>3 Law Firm being present at that meeting.</p> <p>4 My question to you was, whether you</p> <p>5 were aware of any notes being provided to the Groom</p> <p>6 Law Firm by the board members to help draft this</p> <p>7 letter that's marked Exhibit 16?</p> <p>8 A No, I'm not aware of any notes</p> <p>9 provided to the Groom Law Group.</p> <p>10 Q Are you aware of any conversations</p> <p>11 that the board members had with the Groom Law Firm</p> <p>12 to help them draft this letter that's marked as</p> <p>13 Exhibit 6?</p> <p>14 MR. MEEHAN: Objection. Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: No, sir, I'm not.</p> <p>17 BY MR. DENNIE:</p> <p>18 Q Have you reviewed this letter</p> <p>19 thoroughly?</p> <p>20 A I looked at it for this deposition,</p> <p>21 sir.</p> <p>22 Q So obviously I haven't deposed the</p> <p>Page 381</p>

<p>1 180-day stops when the committee receives -- let me</p> <p>2 ask it again.</p> <p>3 12.6(a) does not say that it has to</p> <p>4 be received by the Plan office on day 180, correct?</p> <p>5 MR. MEEHAN: Objection. Calls for a</p> <p>6 legal conclusion.</p> <p>7 THE WITNESS: I would say the</p> <p>8 claimant has 180 days from the time they receive</p> <p>9 their decision to file an appeal.</p> <p>10 BY MR. DENNIE:</p> <p>Page 386</p>	<p>1</p> <p>21 Q Wouldn't it start from the day</p> <p>22 following --</p> <p>Page 388</p>
<p>Page 387</p>	<p>1 A No, sir.</p> <p>2 Q -- like every other computation of</p> <p>3 dates that's used in the world?</p> <p>4 MR. MEEHAN: Objection. No</p> <p>5 foundation.</p> <p>6 THE WITNESS: From the day of</p> <p>7 receipt. As written in the Plan language,</p> <p>8 "Claimant will have 180 days from the receipt of an</p> <p>9 adverse determination."</p> <p>10 BY MR. DENNIE:</p> <p>Page 389</p>

	<p>1</p> <p>11 BY MR. DENNIE:</p> <p>12 Q Okay. I just want to be clear. I'm</p> <p>13 not -- I understand you're saying this is what the</p> <p>14 document is. But I'm saying, do you have a</p> <p>15 document showing Mr. Cloud's signature stating he</p> <p>16 received that record on March 4th?</p> <p>17 A I do not have that, sir. I don't</p> <p>18 have a picture of his signature, sir.</p> <p>19 Q Is that a document that you could</p> <p>20 obtain?</p> <p>21 A Honestly, I don't believe so, sir.</p> <p>22 FedEx does not keep records that long. I don't</p> <p>Page 390 Page 392</p>
	<p>1 know how to retrieve a record that old.</p> <p>Page 391 Page 393</p>

	<p>12 Q Okay. Can you tell me why Elise</p> <p>13 Richard of the Plan is communicating with members</p> <p>14 of the Groom Firm about Mr. Cloud's application in</p> <p>15 2016?</p> <p>16 A This would be part of his appeal, as</p> <p>17 I understand it. Groom Law Group was creating</p> <p>18 appeal summaries, and in this moment when</p> <p>19 Mr. Cloud -- I'm sorry, Mr. Cloud acknowledged</p> <p>20 sending in documents with his appeal, those</p> <p>21 documents seemed to be missing. So I understand</p> <p>22 that Elise and Natallia went back to Mr. Cloud</p> <p>Page 402 Page 404</p>
<p>1</p>	<p>1 asking, "Are there documents you wish to submit</p> <p>2 with your appeal?"</p> <p>3</p> <p>Page 403 Page 405</p>

APPENDIX 2

	<div>1 the role of the commissioner on the board?</div> <div>2 A The commissioner acts as the chairman</div> <div>3 of the retirement board.</div> <div>4 Q Does he have a vote?</div> <div>5 A No.</div>
Page 22	Page 24
Page 23	Page 25

<p>11 Q What time period did you serve on the 12 committee? 13 A I have served on the committee since 14 its inception, which I believe was in 2006. And I 15 still serve on the committee. 16 Q So you served on the committee from 17 2006 to the present. Is that correct? 18 A Correct. 19 Q Do you know on a statistical basis 20 how many disability claims have been granted versus 21 denied? 22 A I do not.</p> <p style="text-align: right;">Page 26</p>	<p>15 Q Okay. So if I was trying to 16 determine when benefits were provided and that case 17 granted or denied, where would I find that 18 information? 19 A You'd probably find that from the 20 Plan Benefit Office. 21 Q Okay. Yesterday there was some 22 testimony about quarterly reports prepared by the</p> <p style="text-align: right;">Page 28</p>
<p>?</p> <p style="text-align: right;">Page 27</p>	<p>1 claim benefits office? 2 A Yes, for the retirement board meeting 3 purposes. 4 Q Have you seen those records? 5 A Yes. 6 Q In your experience, are they prepared 7 every quarter? 8 A Yes. 9 Q So that's something that the Plan can 10 get its hands on pretty easy I would think, 11 correct? 12 A I would think so.</p> <p>17 How do you receive documentation for 18 board meetings? 19 A They are included in the counsel 20 report. 21 Q Okay. Tell me what a counsel report 22 is.</p> <p style="text-align: right;">Page 29</p>

<p>1 A The counsel report is the information</p> <p>2 that Groom Law Group compiles for the retirement</p> <p>3 board meeting.</p> <p>4 Q So the quarterly report, is that an</p> <p>5 attachment to the counsel report?</p> <p>6 A It is in the counsel report -- a part</p> <p>7 of the counsel report.</p> <p>8 Q And I just want to be clear on how it</p> <p>9 gets there. So you're familiar with the Plan or</p> <p>10 the retirement board -- let me do that another way.</p> <p>11 So you're familiar with the</p> <p>12 retirement board -- let me do that again. Today, I</p> <p>13 can't talk. It's something about the air.</p> <p>14 You're familiar that the retirement</p> <p>15 board compiles statistical information on whether</p> <p>16 claims are granted or denied, correct?</p> <p>17 A The Claim Benefit Office compiles</p> <p>18 that information.</p> <p>19 Q What did I say? I said the</p> <p>20 retirement board?</p> <p>21 A Yeah, you did.</p> <p>22 Q Okay. I'm sorry.</p> <p style="text-align: right;">Page 30</p>	<p style="text-align: right;">Page 32</p>
<p>1 The Plan Benefit Office compiles</p> <p>2 granted versus denied disability applications,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And that's a document that we should</p> <p>6 be able to get our hands on pretty easily, correct?</p> <p>7 A I would think so.</p> <p>8 Q As it relates to funding of the Plan,</p> <p>9 are there documentation, records, that you have</p> <p>10 seen that indicates how much funding goes out on a</p> <p>11 quarterly basis?</p> <p>12 A I believe that is in the counsel</p> <p>13 report as well.</p> <p>14 Q So that's also information that's</p> <p>15 compiled by the retirement -- excuse me. Let me</p> <p>16 ask it again.</p> <p>17 That's also information that's</p> <p>18 retirement -- that's also information that's</p> <p>19 compiled by the Benefits Office, correct?</p> <p>20 A Yes.</p> <p style="text-align: right;">Page 31</p>	<p>8 Are you saying the information that</p> <p>9 we just talked about, the granting or denial of</p> <p>10 benefits claims, the funding of claims, that's not</p> <p>11 in the counsel report, but it's in a director's</p> <p>12 report?</p> <p>13 Is that what you're saying?</p> <p>14 A Correct.</p> <p>18 Q Okay. When you say director's</p> <p>19 report, what director are you referencing?</p> <p>20 A The Plan director.</p> <p style="text-align: right;">Page 33</p>

<p>12 MR. DENNIE: So I'm going to again 13 request that those reports be provided. I 14 requested it yesterday. There are multiple 15 requests for production that have asked for records 16 similar to that, and I believe that was 37, 57, 58, 17 there's probably more. When are we going to get 18 those documents? We requested those probably nine 19 months ago. 20 MR. MEEHAN: If you're directing that 21 to me, you know, send me a request. 22 MR. DENNIE: We did nine months ago. Page 34</p>	<p>1 focused on the deposition today. I'll respond to 2 you as soon as possible. 3 MR. DENNIE: Let's go off the record 4 for a second. 7 BY MR. DENNIE: 8 Q So I want to be clear, I can't ask 9 you too many questions about documents I've never 10 seen, but you and the witness yesterday both 11 confirmed that there are records that discuss the 12 funding of the Plan and whether benefits were 13 granted or denied. And you said they're in a 14 director's report, correct? 15 A To the best of my knowledge, yes. 16 Q Are you aware of what the contents of 17 those director's reports say? 18 Let's start with the last quarterly 19 report that you indicated probably would be in 20 February of this year? 21 A No, I don't remember. 22 Q Do you remember the contents of the Page 36</p>
<p>1 MR. MEEHAN: Well, send me a request 2 now telling me what you want and why you think 3 you're entitled to it. And like I said yesterday, 4 we'll take it under advisement and we'll get right 5 back to you. I want to make sure I know exactly 6 what you want, so if you can put it in writing so 7 there's no confusion. 8 MR. DENNIE: Well, just to be clear, 9 we're already on the record. So we're asking for 10 the director's report, the quarterly reports that 11 have been testified to by both of the witnesses 12 that have been withheld that were requested in our 13 first request for production many, many months ago. 14 And discovery is running out and now I'm deposing 15 witnesses and I don't have these report documents. 16 When can I get those? 17 I know you're new to the case, you 18 probably didn't handle that, but your colleague 19 has been in the whole time, so I need to know 20 when we can have them. Can we have them today? 21 MR. MEEHAN: I need you to send me a 22 written request on exactly what you want. I'm Page 35</p>	<p>1 director's report for any quarter prior to the last 2 report that you reviewed? 3 A I don't remember. 4 Q The only way that I'm going to be 5 able to determine what's in those records is by 6 getting the records, because neither you or 7 Mr. Reynolds recalled the contents of the report, 8 other than you know that there's discussion of 9 funding, and there's a discussion of granting and 10 denial of benefits. Is that right? 11 A Correct. Page 37</p>

<p>8 Q Who are the beneficiaries under the 9 Plan? 10 A Who are the beneficiaries under the 11 Plan? 12 Q Yes, ma'am. 13 A The players. 14 Q What was the Plan created to do? 15 A The Plan was created to provide 16 retirement and disability benefits for the players.</p> <p>Page 38</p>	<p>7 Q Are you aware of any steps that the 8 Plan administrator has taken to reduce bias? 9 A I'm not aware. 10 Q Are you aware of any steps that the 11 Plan administrator has taken to promote the 12 accuracy of the decisions? 13 A I'm not aware of any.</p> <p>Page 40</p>
<p>1</p> <p>Page 39</p>	<p>Page 41</p>

<p>12 communications about the interpretation of the Plan</p> <p>13 guidelines with Bethany Marshall and Miki</p> <p>14 Yaras-Davis oral conversations?</p> <p>15 A As I recall, yes.</p> <p>16 Q Did they orally ever give you their</p> <p>17 analysis to certain provisions of the Plan?</p> <p>18 A Yes.</p> <p>19 Q Okay. Do you recall what their</p> <p>20 analysis was?</p> <p>21 A No.</p> <p>Page 66</p>	<p>Page 68</p>
	<p>1</p> <p>3 Q Who on the committee represents the</p> <p>4 interest of retired NFL players?</p> <p>5 A I do.</p> <p>6 Q So your duty is to represent the</p> <p>7 interest of the retired NFL players on the</p> <p>8 committee, correct?</p> <p>9 A Correct.</p> <p>Page 69</p>

<p>1</p> <p>3 So if we go down about halfway down</p> <p>4 the page, there it says, "NFLPA designated members:</p> <p>5 Sam McCullum, Jeff Van Note, Robert Smith."</p> <p>6 Did I read that correctly?</p> <p>7 A Correct.</p> <p>8 Q So when we were talking a minute ago</p> <p>9 about the members of the board that owe a duty to</p> <p>10 the retired players, are those these three</p> <p>11 individuals?</p> <p>12 A Correct.</p> <p>Page 70</p>	<p>Page 72</p>
<p>1</p> <p>?</p> <p>Page 71</p>	<p>1</p> <p>Page 73</p>

Page 78	Page 80
Page 79	Page 81

4 Q You do not have a law license?
5 A No.
6 Q You don't have a medical license?
7 A No.
8

<p>Page 102</p>	<p>8 Q Right before we broke to get you a 9 glass of water, you were indicating that if a 10 player called you about their disability benefits 11 application and indicated they had not received 12 their records, you would direct them to the Plan, 13 correct? 14 A Uh-huh. 15 Q The Plan being you would direct them 16 back to the benefits office? 17 A Correct. 18 Q Is that the kind of standard approach 19 the Players Association, if a player calls and 20 says, "I'm not receiving my records," go to the 21 retirement office to get those? 22 A Correct.</p> <p>Page 104</p>
<p>Page 103</p>	<p>Page 105</p>

9 Q Have you received any legal training
10 to help you decide and analyze disability claims?

11 A Now, when you say "legal training,"
12 what do you mean by that?

13 Q Training about laws and cases.

14 A You said training about laws or
15 cases?

16 Q And cases.

17 A And cases.

18 Not that I recall.

Page 114

Page 116

Page 115

Page 117

30 (Pages 114 - 117)

8 Q Do you understand when symptoms can
9 occur from head injuries that resulted from playing
10 in the NFL?

11 A Yes.

12 Q What do you understand?

13 A I understand that they can occur
14 right away or they can take a number of years --
15 months or years to manifest, surface.
16

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Page 124

18 Q Do you have any reason to dispute
19 that Mr. Cloud has incurred and received head
20 injuries while playing in the NFL?

21 A No, I don't have any reason to
22 dispute that.

Page 123

Page 125

32 (Pages 122 - 125)

1 Q Do you have any reason to dispute
2 that Mr. Cloud has had symptoms associated with
3 concussion syndrome while playing in the NFL?

4 A I don't have any reason to dispute
5 that.

6 Q You would agree that concussion
7 symptoms can worsen over time?

8 A Yes, I know that they can worsen over
9 time.

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Page 127

Page 129

33 (Pages 126 - 129)

Page 142	? Page 144
Page 143	14 Have you read any studies on 15 orthopedic injuries sustained by players who have 16 formerly played in the NFL? 17 A Not that I recall. 18 Q Have you read any white papers on 19 orthopedic injuries commonly sustained by NFL 20 players? 21 A Not that I recall. 22 Q Have you done any personal research Page 145

- 1 on orthopedic injuries that are commonly incurred
- 2 on players who formerly played in the NFL?
- 3 A Not that I recall.

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Page 147

Page 149

38 (Pages 146 - 149)

5 Q And if you flip to CLOUD-MIN-004, it
6 indicates it's a denial of reclassification request
7 from Mr. Cloud, correct?

8 A Correct.

Page 158

Page 160

10 Q Is there a repository of
11 interpretations that are provided to the Plan
12 document?

13 A A repository of interpretations?

14 Q Correct.

15 A You said of the Plan document?

16 Q Correct.

17 A Not to my knowledge.

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Page 161

41 (Pages 158 - 161)

12 Are you aware anywhere that someone
13 can go and see what interpretations of the Plan
14 have been applied in years past?
15 A No, I am not.

Page 162

Page 164

14 Q Okay. So in your 15 years on the
15 committee, you have asked for between 10 and 50
16 interpretation requests of Article 5, Deposition
17 Exhibit 1, correct?
18 A That's correct in that's what I said.

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Page 165

42 (Pages 162 - 165)

<p>1 Q So is it fair to say you were not 2 present in person or by phone on the November 15th, 3 16th, 2016 meeting? 4 A That is correct.</p>	<p>15 You indicated that the board decided 16 Mr. Cloud's appeal, his request for 17 reclassification, correct? 18 A Correct. 19 Q The members on the board who made 20 that decision were Katie Blackburn, Dick Cass, Ted 21 Philips, Sam McCullum, Jeff Van Note, and Robert 22 Smith, correct?</p>

<p>1 A Correct.</p> <p>2 Q If I wanted to know how the board</p> <p>3 members arrived at their decision to deny</p> <p>4 Mr. Cloud's appeal, I would need to talk to them</p> <p>5 individually, correct?</p> <p>6 MR. MEEHAN: Objection. Calls for a</p> <p>7 legal conclusion.</p> <p>8 But go ahead and give your answer,</p> <p>9 ma'am.</p> <p>10 THE WITNESS: Yes.</p> <p style="text-align: right;">Page 174</p>	<p>1</p> <p>20 So on the NFLPA side, the</p> <p>21 representatives, you indicated that Bethany</p> <p>22 Marshall, Miki Yaras-Davis, and the Groom Law Firm</p> <p style="text-align: right;">Page 176</p>
<p style="text-align: right;">?</p> <p style="text-align: right;">Page 175</p>	<p>1 was there representing the Players Association. Is</p> <p>2 that correct?</p> <p>3 A Correct.</p> <p>4 Q And for the Groom Law Firm you</p> <p>5 indicated that Alvaro Anillo, Doug Ell, Mike Junk,</p> <p>6 Mike Maricco were there from the Groom Law Firm,</p> <p>7 correct?</p> <p>8 A Maricco. Correct.</p> <p>9 Q Mike Maricco?</p> <p>10 A Maricco, yeah.</p> <p>11 Q Do the individuals who you listed</p> <p>12 from the Groom Law Firm also advise the committee?</p> <p>13 A Alvaro Anillo would be our adviser</p> <p>14 for the most part.</p> <p style="text-align: right;">Page 177</p>

5 Q Yesterday you heard Patrick Reynolds
6 confirm that there is a repository of information
7 for medical records for NFL players, correct?

8 A Correct.
9

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48 (Pages 186 - 189)

	<p>5 As it pertains to Mr. Cloud's 2016</p> <p>6 reclassification benefits, did you write the</p> <p>7 decision letter in that case?</p> <p>8 A I did not.</p> <p>9 Q As it pertains to Mr. Cloud's 2016</p> <p>10 reclassification for benefits application, did you</p> <p>11 review a decision letter before it was sent out?</p> <p>12 A Not that I recall.</p> <p>13 Q As it pertains to Mr. Cloud's 2016</p> <p>14 reclassification for disability benefits</p> <p>15 application, did you review the decision letter and</p> <p>16 make any changes to it before it was sent out?</p> <p>17 A Not that I recall.</p> <p style="text-align: right;">?</p> <p style="text-align: right;">Page 200</p>
<p>3 Q Have you ever written a decision</p> <p>4 letter?</p> <p>5 A No.</p> <p>6 Q Do you review the decision letter</p> <p>7 before it goes out?</p> <p>8 A No.</p> <p>9 Q Have you ever made any changes to a</p> <p>10 decision letter before it goes out?</p> <p>11 A Not that I recall.</p> <p>20 Q Did you write the letter on</p> <p>21 Mr. Cloud's 2014 T&P benefits application?</p> <p>22 A I did not.</p> <p style="text-align: right;">Page 199</p>	<p style="text-align: right;">Page 201</p>

Page 202

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Page 203

Page 205

7 Q As of 7/17/14, were you aware of
8 Mr. Cloud receiving a concussion anywhere other
9 than playing in the NFL?

10 A Not that I recall.

11 Q As we sit here today, are you aware
12 of Mr. Cloud receiving a concussion anywhere other
13 than playing in the NFL?

14 A Not that I recall.

15 Q Okay. Were you creating a
16 distinction between the two because you asked me
17 "was I, am I," so is there something that I'm
18 missing?

19 A No, I just wanted to make sure. I
20 didn't know if you were talking about while I was
21 receiving his application or now, so that's why I
22 wanted to know so...

52 (Pages 202 - 205)

1 Q But you're not aware of any
2 circumstance where Mr. Cloud has had another
3 concussion outside of playing in the NFL, isn't
4 that correct?

5 A Correct.

16 Q Let's flip over to Exhibit 15,
17 DICC-003.

18 A I'm good.

19 Q I'm not asking you to read this word
20 for word because this one's a little bit longer,
21 but some of these notes I'm not able to read super
22 clearly, so I want to make sure I don't misread

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1 them for you. Can you just go through like you did
2 with the notes from 2014 and read your notes from
3 February 22nd, 2016?

4 A Okay. "Mike A. Cloud, he already had
5 Inactive A. Again, he had credited seasons '99
6 through '05. He was a reclassification request for
7 Active Football. He was approved on his initial
8 Social Security -- initial T&P application by
9 virtue of his Social Security award.

10 Helmet-to-helmet collision on 10/31/04 while
11 playing with the Minnesota Vikings. Migraines,

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1

3 Q And you would agree the only
4 employment that Mr. Cloud has ever referenced was a
5 month of part-time employment at Equinox. Is that
6 correct?

7 A Based on that application, correct.

8 Q Do you know why he left Equinox?

9 A If memory serves me correct, from my
10 recent viewing of the application, it was
11 because -- I can't remember. I do remember seeing
12 something, but I can't remember exactly what it
13 was.

14 Q Would it surprise you that that was
15 concussion-related symptoms?

16 A What, the reason why he left?

17 Q Yes, ma'am.

18 A Would it surprise me?

19 Q Correct.

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Page 209

3 Q Do you know why Mr. Cloud's contract
4 was terminated with the Giants in 2005?

5 A I don't.

6 Q Do you know that Mr. Cloud couldn't
7 remember basic running back plays that he had been
8 running his entire life?

9 A Okay.

10 Q Did you know that?

11 A I do remember seeing that in review
12 of the file.

k
Page 210

Page 212

Page 211

17 Q And, again, in this you note,
18 symptoms such as migraines, clinical depression,
19 memory loss, post-concussion syndrome, and vertigo.
20 Is that correct?
21 A Correct.

Page 213

54 (Pages 210 - 213)

	<p>19 BY MR. DENNIE:</p> <p>20 Q Is there any reason that you can</p> <p>21 think of that the Plan through the retirement</p> <p>22 office would not provide medical records and scans</p> <p>Page 222 Page 224</p>
<p>1</p> <p>Page 223</p>	<p>1 that were requested by Michael Cloud?</p> <p>2 A There was no reason not to be</p> <p>3 provided.</p> <p>4 Q You would agree that it's important</p> <p>5 for a player to have all their medical records and</p> <p>6 scans from a Plan neutral, correct?</p> <p>7 A If he so desires, yes. If it is</p> <p>8 important to him, I agree.</p> <p>9 Q Because a player can take those</p> <p>10 medical records and scans to their own doctor for</p> <p>11 an analysis, right?</p> <p>12 A This is true.</p> <p>13 Q And if they don't have the documents,</p> <p>14 they can't go take them to a doctor of their</p> <p>15 choice, correct?</p> <p>16 A I mean, you can't take what you don't</p> <p>17 have.</p> <p>18 Q So you would agree with me, correct?</p> <p>19 A I would agree that if they don't have</p> <p>20 it, they can't take it.</p> <p>21 Q Do you know Dr. Mandelbaum is?</p> <p>22 A I know the name.</p> <p>Page 223 Page 225</p>

57 (Pages 222 - 225)

2 a former Plan physician?

3 A I do.

4 Q If Mr. Cloud requested all of his
5 medical records and scans, and some of them were
6 done by Dr. Mandelbaum, is there any reason that
7 the Plan wouldn't provide them to him?

8 A Not to my knowledge.

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6 Q And if someone owes a duty to the
7 players, as you testified earlier, you would agree
8 that for the best opportunity to be successful in a
9 disability application, is going to be provide the
10 most full and extensive medical history that they
11 can provide, correct?

12 A Correct.

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4 Q And if they weren't, Michael Cloud
5 cannot use it in a disability benefits application
6 any records he doesn't have, correct?

7 A Correct, he can't use anything he
8 doesn't have.

17 My question is simply: What
18 complaints or riches have you heard?

19 A So, again, if a player is denied his
20 application, oftentimes, we get complaints about
21 that, about the fact that he was denied the
22 process, maybe the doctor, it could be any number

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58 (Pages 226 - 229)

<p>1 of things.</p> <p>2 Q And you gave me three. Correct me if</p> <p>3 I'm wrong, the three that you recall being</p> <p>4 complaints that you heard from players: One,</p> <p>5 complaints that they were denied benefits; two,</p> <p>6 complaints about neutral plan physicians; and,</p> <p>7 three, complaints about disability benefits</p> <p>8 process. Is that correct?</p> <p>9 A Correct.</p> <p>10 Q Are there any others that you recall?</p> <p>11 A No.</p> <p>12 Q What complaints do you recall about</p> <p>13 the disability benefits process that you heard?</p> <p>14 A It takes too long, having to travel</p> <p>15 to see the doctor, too many appointments.</p> <p>16 Q Anything else?</p> <p>17 A That's it.</p> <p>18 Q Have you ever heard complaints from</p> <p>19 players that they have been denied access to their</p> <p>20 medical records?</p> <p>21 A Not that I can recall.</p> <p>22 Q So the complaints about the process</p> <p style="text-align: right;">Page 230</p>	<p>1 A Just what you said, that they</p> <p>2 don't -- sometimes they don't think that the</p> <p>3 doctors are neutral.</p> <p style="text-align: right;">Page 232</p>
<p>1 that you mentioned, it takes too long, players have</p> <p>2 to travel to see a Plan neutral doctor, and there</p> <p>3 are too many doctor appointments. Is that correct?</p> <p>4 A Correct.</p> <p>5 Q Do you recall any others?</p> <p>6 A I don't.</p> <p>7 Q What complaints have you heard about</p> <p>8 the neutral plan physicians?</p> <p>9 A Didn't spend enough time, too brash,</p> <p>10 maybe didn't ask enough questions or the questions</p> <p>11 that the player thought he should ask.</p> <p>12 Q What else?</p> <p>13 A That's it, that I can think of.</p> <p>14 Q Complaints about the doctor, the</p> <p>15 doctor didn't spend enough time with them, they're</p> <p>16 too brash, they didn't ask enough questions. Is</p> <p>17 that correct?</p> <p>18 A That's correct.</p> <p>19 Q And have you ever heard players argue</p> <p>20 that the Plan doctors are not truly neutral?</p> <p>21 A Yes.</p> <p>22 Q What have you heard about that?</p> <p style="text-align: right;">Page 231</p>	

Page 234	22 Q So the actual application they submit Page 236
	1 has been changed? 2 A Correct.
Page 235	Page 237

2 Q So you don't know who filed them or
3 the subject matter of any of the complaints that
4 you have read that are attached to this counsel
5 report. Is that correct?

6 A That's correct.

7 Q If I understood correctly from
8 yesterday, counsel report is prepared and
9 distributed quarterly, right?

10 A Correct.

11 Q So next week you're probably going to
12 get another counsel report, right?

13 A That is correct.

14 Q And the last one you received was
15 sometime in February?

16 A That is correct.

17 Q Do you remember what was on the
18 February report or attached thereto?

19 A I do not.

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22

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20 Q You've already said a couple of times
21 you believe you owe a duty to the players, correct?

22 A Correct.

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62 (Pages 242 - 245)

1 Q So you know from your experience
2 working for the Players Association how damaging it
3 is to them when their benefits are denied when they
4 have concussion syndrome, correct?
5 MR. MEEHAN: Object to the form.
6 You can go ahead.
7 BY MR. DENNIE:
8 Q You can answer.
9 A I know what they tell me.
10 Q And they told you it's really
11 damaging to them, correct?
12 A I may have been told that a time or
13 two.

16 it. Okay?
17 You know that a denial of these
18 benefits are damaging to these players, don't you?
19 MR. MEEHAN: Objection to the form.
20 But, ma'am, make sure he answers

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1 to them that their claims were denied when they
2 have serious medical conditions?
3 A I can't put a specific number, but
4 quite a few.
5 Q More than a hundred?
6 A I don't know about more than a
7 hundred.
8 Q Put an estimate on it. What do you
9 think?
10 A I've been there for many years.
11 Fifty maybe. I don't know.

Page 248

21 Q How many times would you say players
22 have come to you and told you how damaging it was

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<p>Page 250</p>	<p>9 THE WITNESS: It's going to be one or 10 the other. Social Security awards are the general 11 standard. And in his case, because he had a Social 12 Security award, it fell under 5.2(b). 13 BY MR. DENNIE: 14 Q I understand, but I just want to be 15 clear and understanding what you just testified to. 16 Had he not had his Social Security 17 award, based on your experience on the committee 18 for 15 years, and in your review of thousands of 19 applications, you believe he meets the criteria of 20 Section 5.2 also? 21 A Correct.</p> <p>Page 252</p>
<p>5 reclassification application compiles with Section 6 5.1 of Exhibit 1? 7 A Yes. 8 Q When Mr. Cloud was granted T&P 9 benefits in 2014, which criteria under 5.2 of 10 Exhibit 1 did he meet? 11 A 5.2(b).</p> <p>Page 251</p>	<p>Page 253</p>

<p>14 Q You're welcome to read it if you want 15 to, but generally explain to me what your 16 understanding of the "shortly after" definition as 17 shown in 5.3(e) of Exhibit 1 is. 18 A A player becomes disabled no later 19 than six months after his disability arises -- no 20 earlier, rather, but no later than 12 months 21 afterwards.</p> <p>Page 254</p>	<p>4 Does October 31st, 2004, occur during 5 his playing career? 6 A Correct. Yes. 7 Q We talked earlier, and I believe you 8 agreed, that you were aware and recall Mr. Cloud 9 was having trouble remembering basic football plays 10 after that collision. Do you recall that? 11 A I recall.</p> <p>21 I want you to correct me if I'm 22 wrong, but earlier you testified and agreed that</p> <p>Page 256</p>
<p>14 Your notes make reference to 15 Dr. Cronin indicating that the helmet-to-helmet 16 collision on October 31st, 2004, was the event that 17 caused his concussion-related syndrome. Is that 18 right? 19 A Yeah, that's correct.</p> <p>Page 255</p>	<p>1 concussion syndrome symptoms can advance over time? 2 A I did, yes. 3 Q And you're aware of that because you 4 worked with the Players Association and you even 5 read a few studies or articles, as I recall. Is 6 that correct? 7 A Correct.</p> <p>Page 257</p>

<p>Page 263</p>	<p>Page 264</p> <p>10 BY MR. DENNIE:</p> <p>11 Q If you will flip over to Section</p> <p>12 5.7(b) of Exhibit 1.</p> <p>13 A You said (b)?</p> <p>14 Q 5.7(b), yes, ma'am.</p> <p>15 A I'm there.</p> <p>16 Q What do you understand that Section</p> <p>17 to pertain to?</p> <p>18 A Reclassification of T&P benefits.</p> <p>Page 265</p>

<p>4 Q Is changed circumstances defined in</p> <p>5 the Plan?</p> <p>6 A No.</p> <p>7</p> <p>21 Q So do you want to change your answer</p> <p>22 on who came up with the definition of changed</p> <p>Page 266</p>	<p>1</p> <p>5 Q In your approximately 15 years on the</p> <p>6 committee, how many reclassification decisions have</p> <p>7 you been a part of?</p> <p>8 A Maybe between 10 and 15.</p> <p>9 Q And in the 10 or 15 reclassification</p> <p>10 decisions that you have been a part of, have you</p> <p>11 had to determine what changed circumstances means</p> <p>12 in all 10 or 15 of those cases?</p> <p>13 A Yes.</p> <p>14 Q What do you think it means?</p> <p>15 A It means a new or different injury or</p> <p>16 illness or impairment.</p> <p>Page 268</p>
<p>1 circumstances?</p> <p>2 A Yes, as a matter of fact I do. I</p> <p>3 don't know who came up with the definition.</p> <p>4</p> <p>Page 267</p>	<p>Page 269</p>

7 THE WITNESS: I agree that a new
8 impairment can include a concussion symptom, yeah.

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9 earlier you testified that as it pertains to
10 Mr. Cloud's 2016 reclassification decision letter,
11 you didn't read it before it went out, correct?

12 A That is correct.

16 Q So you certainly didn't tell anyone,
17 "This is what the definition of changed
18 circumstance that I want to include in this
19 decision letter," correct?

20 A Correct.

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14 Q Have you ever asked anyone to define
15 for you what changed circumstances means?

16 A Not that I recall.

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69 (Pages 270 - 273)

	<p>1 that there be a logical definition of clear and</p> <p>2 convincing that you would apply to every case?</p> <p>3 A Yes, it would be helpful.</p> <p>4 Q Because you want uniform consistency</p> <p>5 on the way that disability benefits applications</p> <p>6 are being decided, correct?</p> <p>7 A It would definitely be helpful.</p>
	<p>14 Q You would agree it's important for</p> <p>15 players to understand that there's uniformity in</p> <p>16 the way things are being applied across the board</p> <p>17 in disabled cases, correct?</p> <p>18 A I would agree with that, yeah.</p>
<p>22 Q Is clear and convincing defined</p> <p>Page 274</p>	<p>Page 276</p>
<p>1 anywhere in the Plan?</p> <p>2 A No.</p> <p>3 Q Has anyone told you what clear and</p> <p>4 convincing means?</p> <p>5 A Not that I recall.</p> <p>9 Q Have you come up with your own</p> <p>10 definition of what clear and convincing means?</p> <p>11 A I'm not sure.</p>	
<p>21 Q Don't you think it's important if</p> <p>22 you're trying to apply a set of facts to the Plan,</p> <p>Page 275</p>	<p>?</p> <p>Page 277</p>

<p>1</p> <p>10 Are you disputing that Mr. Cloud is</p> <p>11 disabled under the terms of Plan?</p> <p>12 A I am not.</p>	<p>12 Correct me if I'm wrong, but you</p> <p>13 testified earlier that a new concussion symptom can</p> <p>14 qualify as a new impairment, meaning it's a changed</p> <p>15 circumstance in the terms of the Plan, correct?</p> <p>16 A Yes.</p>

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	<p>14 Q Correct me if I'm wrong, you said</p> <p>15 that the concussion symptoms that you know of are</p> <p>16 headaches, dizziness, sleepiness, and vertigo. Is</p> <p>17 that correct?</p> <p>18 A Correct.</p> <p>Page 294</p>
	<p>6 Q Are there any additional concussion</p> <p>7 symptoms that you know of?</p> <p>8 A Maybe forgetfulness.</p> <p>9 Q Anything else?</p> <p>10 A Anger.</p> <p>20 Q So, for example, forgetfulness, you</p> <p>21 might forget small things now, but five years from</p> <p>22 now you may not remember virtually anything. Is</p> <p>Page 295</p> <p>Page 297</p>

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<p>1 that a progression of concussion symptoms that</p> <p>2 you've seen in other disability cases that you've</p> <p>3 administered on the committee?</p> <p>4 A Yes.</p> <p>20 Based on your role on the committee,</p> <p>21 and your understanding of concussion symptoms,</p> <p>22 trouble sleeping may be a symptom?</p> <p style="text-align: right;">Page 298</p>	<p>1 Q Is migraines a common concussion</p> <p>2 symptom?</p> <p>3 A Yes.</p> <p>4 Q Is dementia a common concussion</p> <p>5 symptom?</p> <p>6 A Yes.</p> <p>7 Q Is failure to maintain verbal fluency</p> <p>8 a common concussion symptom?</p> <p>9 A Yes.</p> <p>10 Q Is unpredictability a common</p> <p>11 concussion symptom?</p> <p>12 A Yes.</p> <p>13 Q Is irritability a common concussion</p> <p>14 symptom?</p> <p>15 A Yes.</p> <p>16 Q Is mood swings a common concussion</p> <p>17 symptom?</p> <p>18 A Yes.</p> <p style="text-align: right;">Page 300</p>
<p>1 A I believe so.</p> <p>2 Q Is sensitivity to light a common</p> <p>3 concussion symptom that you have seen?</p> <p>4 A Yes.</p> <p>5 Q Is paranoia a common concussion</p> <p>6 symptom that you've seen?</p> <p>7 A Yes.</p> <p>8 Q Is lack of focus or inability to</p> <p>9 focus a common concussion symptom that you've seen?</p> <p>10 A Yes.</p> <p>11 Q Is suicidal thoughts a common</p> <p>12 concussion symptom that you've seen?</p> <p>13 A Yes.</p> <p>14 Q Is failure to grasp reality a common</p> <p>15 concussion symptom that you've seen?</p> <p>16 A I believe so.</p> <p>17 Q Is failure to maintain an appointment</p> <p>18 a common concussion symptom?</p> <p>19 A Yes.</p> <p>20 Q Is depression a common concussion</p> <p>21 symptom?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 299</p>	<p>8 Q Based on the research that you've</p> <p>9 read on concussions and common media writings, is</p> <p>10 it fair to say that over a period of time, these</p> <p>11 concussion symptoms can get much more severe?</p> <p>12 A Yes, it is fair to say that they can</p> <p>13 get worse.</p> <p style="text-align: right;">Page 301</p>

21 Q If you look on CLOUD-AR-108, of
22 Exhibit 7, you will see a discussion of neck, lower
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1 back foot, lower leg issues. Do you see that?
2 A I see it.
3 Q Ultimately the conclusion in his file
4 was Mr. Cloud suffered from both neurological and
5 orthopedic ailments. Is that correct?
6 A Correct.

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Page 305

77 (Pages 302 - 305)

	<p>17 Q Have you ever seen a PET scan</p> <p>18 presented to the committee on a player's</p> <p>19 application?</p> <p>20 A I believe I have.</p> <p>21 Q What do you understand a PET scan to</p> <p>22 be?</p> <p>Page 306 Page 308</p>
	<p>1 A A scan of the brain.</p> <p>2 Q And do you understand or know what</p> <p>3 that PET scan shows?</p> <p>4 A Abnormalities of the brain.</p> <p>10 Q When you look at a PET scan, what</p> <p>11 shows the abnormality?</p> <p>12 A The coloring maybe, the shading of</p> <p>13 the scan of the brain.</p> <p>14 Q So let me make sure we're on the same</p> <p>15 page and saying the same things.</p> <p>16 So if you've got a scan of the brain</p> <p>17 or a picture of the brain, there's going to be most</p> <p>18 likely some sort of cylindrical or circular spot</p> <p>19 that's a different color which shows there's an</p> <p>20 abnormality, correct?</p> <p>21 A I think that's what it is.</p> <p>Page 307 Page 309</p>

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<p data-bbox="748 947 852 1003">? Page 310</p>	<p data-bbox="1390 978 1471 1003">Page 312</p>
<p data-bbox="768 1875 849 1900">Page 311</p>	<p data-bbox="878 1188 1409 1331">5 Q Okay. Are you aware of any other 6 circumstance where Mr. Cloud sustained orthopedic 7 injuries outside of playing in the NFL? 8 A I am not aware.</p> <p data-bbox="1390 1875 1471 1900">Page 313</p>

<p>Page 314</p>	<p>1 A Yep. Yes. 2 Q Okay. Is Dr. Canizares still a 3 neutral physician? 4 A Yes. 5 Q Is he someone you interface with 6 often? 7 A No. 8 Q Is there any reason that x-ray films, 9 scans were not provided to Mr. Cloud when he 10 requested them? Is there any reason for that? 11 A You said when he requested them? 12 Q Yes, ma'am. 13 A I don't know. I'm not aware of any 14 reason. 15 Q If you will flip over to 174, so 16 CLOUD-AR-174 of Exhibit 2. 17 A I'm here, okay. You said 174? 18 Q Yes, ma'am. 19 A Okay. 20 Q Does this appear to be a copy of 21 Dr. DiDio's report? 22 A It does.</p> <p>Page 316</p>
<p>15 Q All right. Either way, if you flip 16 to AR-172 of Exhibit 2, do you see there that there 17 were various x-rays that were performed on 18 Mr. Cloud? 19 A Yes. 20 Q And those were by Dr. Canizares? 21 A Canizares. 22 Q Canizares?</p> <p>Page 315</p>	<p>1 Q Is there any reason that the full 2 copy of Dr. DiDio's report was not provided to 3 Mr. Cloud until 2019? 4 A I have no idea.</p> <p>18 Q And down toward the bottom of 174, 19 there's a reference that Mr. Cloud was forgetting 20 small things like people's names. Is that correct? 21 A I see it, yes. 22 Q Are there any other concussion</p> <p>Page 317</p>

<p>1 symptoms reported back in 2010?</p> <p>2 A I see headaches, vertigo. Bed spins.</p> <p>3 Q That's part of vertigo?</p> <p>4 A Yeah, I see that now. Yeah.</p> <p>5 Q Okay.</p> <p>6 A Repetition.</p> <p>7 Q I'm sorry?</p> <p>8 A Repetition, repeating himself.</p> <p>9 Q Repetition and?</p> <p>10 A And then I said "repeating himself."</p> <p>11 Q So you're saying repeating himself is</p> <p>12 a concussion symptom?</p> <p>13 A I would think so.</p> <p>14 Q Okay.</p> <p>15 A I would think it can be.</p> <p>16 Q Any others that you recall?</p> <p>17 A That's it.</p> <p>18 Q So the four concussion symptoms that</p> <p>19 you see from the 2010 request for line of duty</p> <p>20 benefits; headaches, vertigo, forgetting names, and</p> <p>21 repeating himself. Is that correct?</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 318</p>	<p>17 Q There's a listing of post-concussion</p> <p>18 syndrome, clinical depression, dementia, migraine,</p> <p>19 vertigo, impair verbal fluency. And then if you</p> <p>20 flip to CLOUD-AR-079, it also list migraine</p> <p>21 headaches, depression, memory loss, vertigo,</p> <p>22 insomnia, unpredictable irritability. Do you see</p> <p style="text-align: right;">Page 320</p>
<p>6 Q Okay. So if you would look at</p> <p>7 CLOUD-AR-175, there's again a reference to the</p> <p>8 October 31, 2004 concussion, correct?</p> <p>9 A I see it.</p> <p>10 Q And I read it, and tell me if I'm</p> <p>11 wrong, "There is clear documentation of a single</p> <p>12 concussion sustained on October 31, 2004, while</p> <p>13 playing with the New York Giants."</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q Okay. And that's the head-to-head</p> <p>17 collision that we talked about a couple of times</p> <p>18 today, correct?</p> <p>19 A That's my assumption, yes.</p> <p style="text-align: right;">Page 319</p>	<p>1 that?</p> <p>2 A I do.</p> <p>3 Q In addition to the neurological</p> <p>4 issues associated with concussion syndrome, there's</p> <p>5 also several orthopedic issues presented in the</p> <p>6 section titled, "Disabilities and Causes." Is that</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q There are acute compartment syndrome,</p> <p>10 plantar fasciitis, nerve injury, bilateral</p> <p>11 shoulders, bilateral elbow, bilateral wrists,</p> <p>12 hands, fingers, bilateral feet and toes, bilateral</p> <p>13 ankles, bilateral knees, bilateral hips, lumbar,</p> <p>14 cervical, thoracic. And then if you flip over to</p> <p>15 CLOUD-AR-097, severe pain in right foot, left great</p> <p>16 foot, left hip, basic neck, lower back, numbness in</p> <p>17 right left leg, arms and fingers.</p> <p>18 Did I get all the orthopedic issues?</p> <p>19 A You did.</p> <p>20 Q And so those were the bases by which</p> <p>21 Mr. Cloud presented in his T&P application in 2004?</p> <p>22 A That's what it appears to be to me.</p> <p style="text-align: right;">Page 321</p>

<p>1</p> <p>Page 322</p>	<p>1</p> <p>Page 324</p>
<p>7 Q Did you write Exhibit 4?</p> <p>8 A I did not.</p> <p>9 Q Do you know who wrote Exhibit 4?</p> <p>10 A I do not.</p> <p>11 Q Did you review Exhibit 4 before it</p> <p>12 was disseminated to Mr. Cloud?</p> <p>13 A Not that I recall.</p> <p>Page 323</p>	<p>Page 325</p>

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

MICHAEL CLOUD, :
 :
 :
 Plaintiff, :
 : Civil Action No.:
 vs. :
 : 3:20-CV-01277-E
 THE BERT BELL/PETE ROZELLE :
 NFL PLAYER RETIREMENT PLAN, :
 :
 Defendant. :

DEPOSITION OF CHRISTOPHINE SMITH

DATE: August 5, 2021
TIME: 8:01 a.m. to 4:55 p.m.
LOCATION: Groom Law Group
1701 Pennsylvania Avenue
Suite 1200
Washington, D.C. 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

1 the role of the commissioner on the board?
2 A The commissioner acts as the chairman
3 of the retirement board.
4 Q Does he have a vote?
5 A No.

Page 22

Page 24

Page 23

Page 25

7 (Pages 22 - 25)

<p>11 Q What time period did you serve on the 12 committee? 13 A I have served on the committee since 14 its inception, which I believe was in 2006. And I 15 still serve on the committee. 16 Q So you served on the committee from 17 2006 to the present. Is that correct? 18 A Correct. 19 Q Do you know on a statistical basis 20 how many disability claims have been granted versus 21 denied? 22 A I do not.</p> <p style="text-align: right;">Page 26</p>	<p>15 Q Okay. So if I was trying to 16 determine when benefits were provided and that case 17 granted or denied, where would I find that 18 information? 19 A You'd probably find that from the 20 Plan Benefit Office. 21 Q Okay. Yesterday there was some 22 testimony about quarterly reports prepared by the</p> <p style="text-align: right;">Page 28</p>
<p>?</p> <p style="text-align: right;">Page 27</p>	<p>1 claim benefits office? 2 A Yes, for the retirement board meeting 3 purposes. 4 Q Have you seen those records? 5 A Yes. 6 Q In your experience, are they prepared 7 every quarter? 8 A Yes. 9 Q So that's something that the Plan can 10 get its hands on pretty easy I would think, 11 correct? 12 A I would think so.</p> <p>17 How do you receive documentation for 18 board meetings? 19 A They are included in the counsel 20 report. 21 Q Okay. Tell me what a counsel report 22 is.</p> <p style="text-align: right;">Page 29</p>

<p>1 A The counsel report is the information</p> <p>2 that Groom Law Group compiles for the retirement</p> <p>3 board meeting.</p> <p>4 Q So the quarterly report, is that an</p> <p>5 attachment to the counsel report?</p> <p>6 A It is in the counsel report -- a part</p> <p>7 of the counsel report.</p> <p>8 Q And I just want to be clear on how it</p> <p>9 gets there. So you're familiar with the Plan or</p> <p>10 the retirement board -- let me do that another way.</p> <p>11 So you're familiar with the</p> <p>12 retirement board -- let me do that again. Today, I</p> <p>13 can't talk. It's something about the air.</p> <p>14 You're familiar that the retirement</p> <p>15 board compiles statistical information on whether</p> <p>16 claims are granted or denied, correct?</p> <p>17 A The Claim Benefit Office compiles</p> <p>18 that information.</p> <p>19 Q What did I say? I said the</p> <p>20 retirement board?</p> <p>21 A Yeah, you did.</p> <p>22 Q Okay. I'm sorry.</p> <p style="text-align: right;">Page 30</p>	<p style="text-align: right;">Page 32</p>
<p>1 The Plan Benefit Office compiles</p> <p>2 granted versus denied disability applications,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And that's a document that we should</p> <p>6 be able to get our hands on pretty easily, correct?</p> <p>7 A I would think so.</p> <p>8 Q As it relates to funding of the Plan,</p> <p>9 are there documentation, records, that you have</p> <p>10 seen that indicates how much funding goes out on a</p> <p>11 quarterly basis?</p> <p>12 A I believe that is in the counsel</p> <p>13 report as well.</p> <p>14 Q So that's also information that's</p> <p>15 compiled by the retirement -- excuse me. Let me</p> <p>16 ask it again.</p> <p>17 That's also information that's</p> <p>18 retirement -- that's also information that's</p> <p>19 compiled by the Benefits Office, correct?</p> <p>20 A Yes.</p> <p style="text-align: right;">Page 31</p>	<p>8 Are you saying the information that</p> <p>9 we just talked about, the granting or denial of</p> <p>10 benefits claims, the funding of claims, that's not</p> <p>11 in the counsel report, but it's in a director's</p> <p>12 report?</p> <p>13 Is that what you're saying?</p> <p>14 A Correct.</p> <p>18 Q Okay. When you say director's</p> <p>19 report, what director are you referencing?</p> <p>20 A The Plan director.</p> <p style="text-align: right;">Page 33</p>

<p>12 MR. DENNIE: So I'm going to again 13 request that those reports be provided. I 14 requested it yesterday. There are multiple 15 requests for production that have asked for records 16 similar to that, and I believe that was 37, 57, 58, 17 there's probably more. When are we going to get 18 those documents? We requested those probably nine 19 months ago. 20 MR. MEEHAN: If you're directing that 21 to me, you know, send me a request. 22 MR. DENNIE: We did nine months ago. Page 34</p>	<p>1 focused on the deposition today. I'll respond to 2 you as soon as possible. 3 MR. DENNIE: Let's go off the record 4 for a second. 7 BY MR. DENNIE: 8 Q So I want to be clear, I can't ask 9 you too many questions about documents I've never 10 seen, but you and the witness yesterday both 11 confirmed that there are records that discuss the 12 funding of the Plan and whether benefits were 13 granted or denied. And you said they're in a 14 director's report, correct? 15 A To the best of my knowledge, yes. 16 Q Are you aware of what the contents of 17 those director's reports say? 18 Let's start with the last quarterly 19 report that you indicated probably would be in 20 February of this year? 21 A No, I don't remember. 22 Q Do you remember the contents of the Page 36</p>
<p>1 MR. MEEHAN: Well, send me a request 2 now telling me what you want and why you think 3 you're entitled to it. And like I said yesterday, 4 we'll take it under advisement and we'll get right 5 back to you. I want to make sure I know exactly 6 what you want, so if you can put it in writing so 7 there's no confusion. 8 MR. DENNIE: Well, just to be clear, 9 we're already on the record. So we're asking for 10 the director's report, the quarterly reports that 11 have been testified to by both of the witnesses 12 that have been withheld that were requested in our 13 first request for production many, many months ago. 14 And discovery is running out and now I'm deposing 15 witnesses and I don't have these report documents. 16 When can I get those? 17 I know you're new to the case, you 18 probably didn't handle that, but your colleague 19 has been in the whole time, so I need to know 20 when we can have them. Can we have them today? 21 MR. MEEHAN: I need you to send me a 22 written request on exactly what you want. I'm Page 35</p>	<p>1 director's report for any quarter prior to the last 2 report that you reviewed? 3 A I don't remember. 4 Q The only way that I'm going to be 5 able to determine what's in those records is by 6 getting the records, because neither you or 7 Mr. Reynolds recalled the contents of the report, 8 other than you know that there's discussion of 9 funding, and there's a discussion of granting and 10 denial of benefits. Is that right? 11 A Correct. Page 37</p>

<p>8 Q Who are the beneficiaries under the 9 Plan? 10 A Who are the beneficiaries under the 11 Plan? 12 Q Yes, ma'am. 13 A The players. 14 Q What was the Plan created to do? 15 A The Plan was created to provide 16 retirement and disability benefits for the players.</p> <p>Page 38</p>	<p>7 Q Are you aware of any steps that the 8 Plan administrator has taken to reduce bias? 9 A I'm not aware. 10 Q Are you aware of any steps that the 11 Plan administrator has taken to promote the 12 accuracy of the decisions? 13 A I'm not aware of any.</p> <p>Page 40</p>
<p>1</p> <p>Page 39</p>	<p>Page 41</p>

12 communications about the interpretation of the Plan
13 guidelines with Bethany Marshall and Miki
14 Yaras-Davis oral conversations?

15 A As I recall, yes.

16 Q Did they orally ever give you their
17 analysis to certain provisions of the Plan?

18 A Yes.

19 Q Okay. Do you recall what their
20 analysis was?

21 A No.

Page 66

Page 68

1

3 Q Who on the committee represents the
4 interest of retired NFL players?

5 A I do.

6 Q So your duty is to represent the
7 interest of the retired NFL players on the
8 committee, correct?

9 A Correct.

Page 69

18 (Pages 66 - 69)

<p>1</p> <p>3 So if we go down about halfway down</p> <p>4 the page, there it says, "NFLPA designated members:</p> <p>5 Sam McCullum, Jeff Van Note, Robert Smith."</p> <p>6 Did I read that correctly?</p> <p>7 A Correct.</p> <p>8 Q So when we were talking a minute ago</p> <p>9 about the members of the board that owe a duty to</p> <p>10 the retired players, are those these three</p> <p>11 individuals?</p> <p>12 A Correct.</p> <p>Page 70</p>	<p>Page 72</p>
<p>1</p> <p>?</p> <p>Page 71</p>	<p>1</p> <p>Page 73</p>

<p>Page 102</p>	<p>8 Q Right before we broke to get you a 9 glass of water, you were indicating that if a 10 player called you about their disability benefits 11 application and indicated they had not received 12 their records, you would direct them to the Plan, 13 correct? 14 A Uh-huh. 15 Q The Plan being you would direct them 16 back to the benefits office? 17 A Correct. 18 Q Is that the kind of standard approach 19 the Players Association, if a player calls and 20 says, "I'm not receiving my records," go to the 21 retirement office to get those? 22 A Correct.</p> <p>Page 104</p>
<p>Page 103</p>	<p>Page 105</p>

9 Q Have you received any legal training
10 to help you decide and analyze disability claims?

11 A Now, when you say "legal training,"
12 what do you mean by that?

13 Q Training about laws and cases.

14 A You said training about laws or
15 cases?

16 Q And cases.

17 A And cases.

18 Not that I recall.

Page 114

Page 116

Page 115

Page 117

30 (Pages 114 - 117)

8 Q Do you understand when symptoms can
9 occur from head injuries that resulted from playing
10 in the NFL?

11 A Yes.

12 Q What do you understand?

13 A I understand that they can occur
14 right away or they can take a number of years --
15 months or years to manifest, surface.

16

Page 122

Page 124

18 Q Do you have any reason to dispute
19 that Mr. Cloud has incurred and received head
20 injuries while playing in the NFL?

21 A No, I don't have any reason to
22 dispute that.

Page 123

Page 125

32 (Pages 122 - 125)

1 Q Do you have any reason to dispute
2 that Mr. Cloud has had symptoms associated with
3 concussion syndrome while playing in the NFL?

4 A I don't have any reason to dispute
5 that.

6 Q You would agree that concussion
7 symptoms can worsen over time?

8 A Yes, I know that they can worsen over
9 time.

Page 126

Page 128

Page 127

Page 129

33 (Pages 126 - 129)

	<p style="text-align: right;">?</p> <p style="text-align: right;">Page 144</p>
<p style="text-align: right;">Page 143</p>	<p>14 Have you read any studies on</p> <p>15 orthopedic injuries sustained by players who have</p> <p>16 formerly played in the NFL?</p> <p>17 A Not that I recall.</p> <p>18 Q Have you read any white papers on</p> <p>19 orthopedic injuries commonly sustained by NFL</p> <p>20 players?</p> <p>21 A Not that I recall.</p> <p>22 Q Have you done any personal research</p> <p style="text-align: right;">Page 145</p>

37 (Pages 142 - 145)

- 1 on orthopedic injuries that are commonly incurred
- 2 on players who formerly played in the NFL?
- 3 A Not that I recall.

Page 146

Page 148

Page 147

Page 149

38 (Pages 146 - 149)

5 Q And if you flip to CLOUD-MIN-004, it
6 indicates it's a denial of reclassification request
7 from Mr. Cloud, correct?

8 A Correct.

Page 158

Page 160

10 Q Is there a repository of
11 interpretations that are provided to the Plan
12 document?

13 A A repository of interpretations?

14 Q Correct.

15 A You said of the Plan document?

16 Q Correct.

17 A Not to my knowledge.

Page 159

Page 161

41 (Pages 158 - 161)

12 Are you aware anywhere that someone
13 can go and see what interpretations of the Plan
14 have been applied in years past?
15 A No, I am not.

Page 162

Page 164

14 Q Okay. So in your 15 years on the
15 committee, you have asked for between 10 and 50
16 interpretation requests of Article 5, Deposition
17 Exhibit 1, correct?
18 A That's correct in that's what I said.

Page 163

Page 165

42 (Pages 162 - 165)

<p>1 Q So is it fair to say you were not 2 present in person or by phone on the November 15th, 3 16th, 2016 meeting? 4 A That is correct.</p>	<p>15 You indicated that the board decided 16 Mr. Cloud's appeal, his request for 17 reclassification, correct? 18 A Correct. 19 Q The members on the board who made 20 that decision were Katie Blackburn, Dick Cass, Ted 21 Philips, Sam McCullum, Jeff Van Note, and Robert 22 Smith, correct?</p>

Page 170

Page 172

Page 171

Page 173

44 (Pages 170 - 173)

<p>1 A Correct.</p> <p>2 Q If I wanted to know how the board</p> <p>3 members arrived at their decision to deny</p> <p>4 Mr. Cloud's appeal, I would need to talk to them</p> <p>5 individually, correct?</p> <p>6 MR. MEEHAN: Objection. Calls for a</p> <p>7 legal conclusion.</p> <p>8 But go ahead and give your answer,</p> <p>9 ma'am.</p> <p>10 THE WITNESS: Yes.</p> <p>Page 174</p>	<p>1</p> <p>20 So on the NFLPA side, the</p> <p>21 representatives, you indicated that Bethany</p> <p>22 Marshall, Miki Yaras-Davis, and the Groom Law Firm</p> <p>Page 176</p>
<p>?</p> <p>Page 175</p>	<p>1 was there representing the Players Association. Is</p> <p>2 that correct?</p> <p>3 A Correct.</p> <p>4 Q And for the Groom Law Firm you</p> <p>5 indicated that Alvaro Anillo, Doug Ell, Mike Junk,</p> <p>6 Mike Maricco were there from the Groom Law Firm,</p> <p>7 correct?</p> <p>8 A Maricco. Correct.</p> <p>9 Q Mike Maricco?</p> <p>10 A Maricco, yeah.</p> <p>11 Q Do the individuals who you listed</p> <p>12 from the Groom Law Firm also advise the committee?</p> <p>13 A Alvaro Anillo would be our adviser</p> <p>14 for the most part.</p> <p>Page 177</p>

45 (Pages 174 - 177)

5 Q Yesterday you heard Patrick Reynolds
6 confirm that there is a repository of information
7 for medical records for NFL players, correct?

8 A Correct.

9

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Page 188

Page 187

Page 189

48 (Pages 186 - 189)

	<p>5 As it pertains to Mr. Cloud's 2016</p> <p>6 reclassification benefits, did you write the</p> <p>7 decision letter in that case?</p> <p>8 A I did not.</p> <p>9 Q As it pertains to Mr. Cloud's 2016</p> <p>10 reclassification for benefits application, did you</p> <p>11 review a decision letter before it was sent out?</p> <p>12 A Not that I recall.</p> <p>13 Q As it pertains to Mr. Cloud's 2016</p> <p>14 reclassification for disability benefits</p> <p>15 application, did you review the decision letter and</p> <p>16 make any changes to it before it was sent out?</p> <p>17 A Not that I recall.</p> <p style="text-align: right;">?</p> <p style="text-align: right;">Page 200</p>
<p>3 Q Have you ever written a decision</p> <p>4 letter?</p> <p>5 A No.</p> <p>6 Q Do you review the decision letter</p> <p>7 before it goes out?</p> <p>8 A No.</p> <p>9 Q Have you ever made any changes to a</p> <p>10 decision letter before it goes out?</p> <p>11 A Not that I recall.</p> <p>20 Q Did you write the letter on</p> <p>21 Mr. Cloud's 2014 T&P benefits application?</p> <p>22 A I did not.</p> <p style="text-align: right;">Page 199</p>	<p style="text-align: right;">Page 201</p>

Page 202

Page 204

Page 203

7 Q As of 7/17/14, were you aware of
8 Mr. Cloud receiving a concussion anywhere other
9 than playing in the NFL?

10 A Not that I recall.

11 Q As we sit here today, are you aware
12 of Mr. Cloud receiving a concussion anywhere other
13 than playing in the NFL?

14 A Not that I recall.

15 Q Okay. Were you creating a
16 distinction between the two because you asked me
17 "was I, am I," so is there something that I'm
18 missing?

19 A No, I just wanted to make sure. I
20 didn't know if you were talking about while I was
21 receiving his application or now, so that's why I
22 wanted to know so...

Page 205

52 (Pages 202 - 205)

<p>1 Q But you're not aware of any 2 circumstance where Mr. Cloud has had another 3 concussion outside of playing in the NFL, isn't 4 that correct? 5 A Correct.</p> <p>16 Q Let's flip over to Exhibit 15, 17 DICC-003. 18 A I'm good. 19 Q I'm not asking you to read this word 20 for word because this one's a little bit longer, 21 but some of these notes I'm not able to read super 22 clearly, so I want to make sure I don't misread</p> <p style="text-align: right;">Page 206</p>	<p>1</p> <p style="text-align: right;">Page 208</p>
<p>1 them for you. Can you just go through like you did 2 with the notes from 2014 and read your notes from 3 February 22nd, 2016? 4 A Okay. "Mike A. Cloud, he already had 5 Inactive A. Again, he had credited seasons '99 6 through '05. He was a reclassification request for 7 Active Football. He was approved on his initial 8 Social Security -- initial T&P application by 9 virtue of his Social Security award. 10 Helmet-to-helmet collision on 10/31/04 while 11 playing with the Minnesota Vikings. Migraines,</p> <p style="text-align: right;">Page 207</p>	<p>1</p> <p>3 Q And you would agree the only 4 employment that Mr. Cloud has ever referenced was a 5 month of part-time employment at Equinox. Is that 6 correct? 7 A Based on that application, correct. 8 Q Do you know why he left Equinox? 9 A If memory serves me correct, from my 10 recent viewing of the application, it was 11 because -- I can't remember. I do remember seeing 12 something, but I can't remember exactly what it 13 was. 14 Q Would it surprise you that that was 15 concussion-related symptoms? 16 A What, the reason why he left? 17 Q Yes, ma'am. 18 A Would it surprise me? 19 Q Correct.</p> <p style="text-align: right;">Page 209</p>

3 Q Do you know why Mr. Cloud's contract
4 was terminated with the Giants in 2005?

5 A I don't.

6 Q Do you know that Mr. Cloud couldn't
7 remember basic running back plays that he had been
8 running his entire life?

9 A Okay.

10 Q Did you know that?

11 A I do remember seeing that in review
12 of the file.

k
Page 210

Page 212

Page 211

17 Q And, again, in this you note,
18 symptoms such as migraines, clinical depression,
19 memory loss, post-concussion syndrome, and vertigo.
20 Is that correct?
21 A Correct.

Page 213

54 (Pages 210 - 213)

	<p>19 BY MR. DENNIE:</p> <p>20 Q Is there any reason that you can</p> <p>21 think of that the Plan through the retirement</p> <p>22 office would not provide medical records and scans</p> <p>Page 222 Page 224</p>
<p>1</p> <p>Page 223</p>	<p>1 that were requested by Michael Cloud?</p> <p>2 A There was no reason not to be</p> <p>3 provided.</p> <p>4 Q You would agree that it's important</p> <p>5 for a player to have all their medical records and</p> <p>6 scans from a Plan neutral, correct?</p> <p>7 A If he so desires, yes. If it is</p> <p>8 important to him, I agree.</p> <p>9 Q Because a player can take those</p> <p>10 medical records and scans to their own doctor for</p> <p>11 an analysis, right?</p> <p>12 A This is true.</p> <p>13 Q And if they don't have the documents,</p> <p>14 they can't go take them to a doctor of their</p> <p>15 choice, correct?</p> <p>16 A I mean, you can't take what you don't</p> <p>17 have.</p> <p>18 Q So you would agree with me, correct?</p> <p>19 A I would agree that if they don't have</p> <p>20 it, they can't take it.</p> <p>21 Q Do you know Dr. Mandelbaum is?</p> <p>22 A I know the name.</p> <p>Page 223 Page 225</p>

57 (Pages 222 - 225)

2 a former Plan physician?

3 A I do.

4 Q If Mr. Cloud requested all of his
5 medical records and scans, and some of them were
6 done by Dr. Mandelbaum, is there any reason that
7 the Plan wouldn't provide them to him?

8 A Not to my knowledge.

Page 226

6 Q And if someone owes a duty to the
7 players, as you testified earlier, you would agree
8 that for the best opportunity to be successful in a
9 disability application, is going to be provide the
10 most full and extensive medical history that they
11 can provide, correct?

12 A Correct.

Page 228

4 Q And if they weren't, Michael Cloud
5 cannot use it in a disability benefits application
6 any records he doesn't have, correct?

7 A Correct, he can't use anything he
8 doesn't have.

17 My question is simply: What
18 complaints or riches have you heard?

19 A So, again, if a player is denied his
20 application, oftentimes, we get complaints about
21 that, about the fact that he was denied the
22 process, maybe the doctor, it could be any number

Page 229

58 (Pages 226 - 229)

<p>1 of things.</p> <p>2 Q And you gave me three. Correct me if</p> <p>3 I'm wrong, the three that you recall being</p> <p>4 complaints that you heard from players: One,</p> <p>5 complaints that they were denied benefits; two,</p> <p>6 complaints about neutral plan physicians; and,</p> <p>7 three, complaints about disability benefits</p> <p>8 process. Is that correct?</p> <p>9 A Correct.</p> <p>10 Q Are there any others that you recall?</p> <p>11 A No.</p> <p>12 Q What complaints do you recall about</p> <p>13 the disability benefits process that you heard?</p> <p>14 A It takes too long, having to travel</p> <p>15 to see the doctor, too many appointments.</p> <p>16 Q Anything else?</p> <p>17 A That's it.</p> <p>18 Q Have you ever heard complaints from</p> <p>19 players that they have been denied access to their</p> <p>20 medical records?</p> <p>21 A Not that I can recall.</p> <p>22 Q So the complaints about the process</p> <p style="text-align: right;">Page 230</p>	<p>1 A Just what you said, that they</p> <p>2 don't -- sometimes they don't think that the</p> <p>3 doctors are neutral.</p> <p style="text-align: right;">Page 232</p>
<p>1 that you mentioned, it takes too long, players have</p> <p>2 to travel to see a Plan neutral doctor, and there</p> <p>3 are too many doctor appointments. Is that correct?</p> <p>4 A Correct.</p> <p>5 Q Do you recall any others?</p> <p>6 A I don't.</p> <p>7 Q What complaints have you heard about</p> <p>8 the neutral plan physicians?</p> <p>9 A Didn't spend enough time, too brash,</p> <p>10 maybe didn't ask enough questions or the questions</p> <p>11 that the player thought he should ask.</p> <p>12 Q What else?</p> <p>13 A That's it, that I can think of.</p> <p>14 Q Complaints about the doctor, the</p> <p>15 doctor didn't spend enough time with them, they're</p> <p>16 too brash, they didn't ask enough questions. Is</p> <p>17 that correct?</p> <p>18 A That's correct.</p> <p>19 Q And have you ever heard players argue</p> <p>20 that the Plan doctors are not truly neutral?</p> <p>21 A Yes.</p> <p>22 Q What have you heard about that?</p> <p style="text-align: right;">Page 231</p>	

Page 234

22 Q So the actual application they submit

Page 236

1 has been changed?

2 A Correct.

Page 235

Page 237

2 Q So you don't know who filed them or
3 the subject matter of any of the complaints that
4 you have read that are attached to this counsel
5 report. Is that correct?

6 A That's correct.

7 Q If I understood correctly from
8 yesterday, counsel report is prepared and
9 distributed quarterly, right?

10 A Correct.

11 Q So next week you're probably going to
12 get another counsel report, right?

13 A That is correct.

14 Q And the last one you received was
15 sometime in February?

16 A That is correct.

17 Q Do you remember what was on the
18 February report or attached thereto?

19 A I do not.

Page 242

22

Page 244

Page 243

20 Q You've already said a couple of times
21 you believe you owe a duty to the players, correct?

22 A Correct.

Page 245

62 (Pages 242 - 245)

<p>1 Q So you know from your experience</p> <p>2 working for the Players Association how damaging it</p> <p>3 is to them when their benefits are denied when they</p> <p>4 have concussion syndrome, correct?</p> <p>5 MR. MEEHAN: Object to the form.</p> <p>6 You can go ahead.</p> <p>7 BY MR. DENNIE:</p> <p>8 Q You can answer.</p> <p>9 A I know what they tell me.</p> <p>10 Q And they told you it's really</p> <p>11 damaging to them, correct?</p> <p>12 A I may have been told that a time or</p> <p>13 two.</p> <p>16 it. Okay?</p> <p>17 You know that a denial of these</p> <p>18 benefits are damaging to these players, don't you?</p> <p>19 MR. MEEHAN: Objection to the form.</p> <p>20 But, ma'am, make sure he answers</p> <p>Page 246</p>	<p>1 to them that their claims were denied when they</p> <p>2 have serious medical conditions?</p> <p>3 A I can't put a specific number, but</p> <p>4 quite a few.</p> <p>5 Q More than a hundred?</p> <p>6 A I don't know about more than a</p> <p>7 hundred.</p> <p>8 Q Put an estimate on it. What do you</p> <p>9 think?</p> <p>10 A I've been there for many years.</p> <p>11 Fifty maybe. I don't know.</p> <p>Page 248</p>
<p>21 Q How many times would you say players</p> <p>22 have come to you and told you how damaging it was</p> <p>Page 247</p>	<p>Page 249</p>

	<p>9 THE WITNESS: It's going to be one or 10 the other. Social Security awards are the general 11 standard. And in his case, because he had a Social 12 Security award, it fell under 5.2(b). 13 BY MR. DENNIE: 14 Q I understand, but I just want to be 15 clear and understanding what you just testified to. 16 Had he not had his Social Security 17 award, based on your experience on the committee 18 for 15 years, and in your review of thousands of 19 applications, you believe he meets the criteria of 20 Section 5.2 also? 21 A Correct.</p> <p>Page 250</p>
<p>5 reclassification application compiles with Section 6 5.1 of Exhibit 1? 7 A Yes. 8 Q When Mr. Cloud was granted T&P 9 benefits in 2014, which criteria under 5.2 of 10 Exhibit 1 did he meet? 11 A 5.2(b).</p> <p>Page 251</p>	<p>Page 252</p> <p>Page 253</p>

<p>14 Q You're welcome to read it if you want 15 to, but generally explain to me what your 16 understanding of the "shortly after" definition as 17 shown in 5.3(e) of Exhibit 1 is. 18 A A player becomes disabled no later 19 than six months after his disability arises -- no 20 earlier, rather, but no later than 12 months 21 afterwards.</p> <p style="text-align: right;">Page 254</p>	<p>4 Does October 31st, 2004, occur during 5 his playing career? 6 A Correct. Yes. 7 Q We talked earlier, and I believe you 8 agreed, that you were aware and recall Mr. Cloud 9 was having trouble remembering basic football plays 10 after that collision. Do you recall that? 11 A I recall.</p> <p>21 I want you to correct me if I'm 22 wrong, but earlier you testified and agreed that</p> <p style="text-align: right;">Page 256</p>
<p>14 Your notes make reference to 15 Dr. Cronin indicating that the helmet-to-helmet 16 collision on October 31st, 2004, was the event that 17 caused his concussion-related syndrome. Is that 18 right? 19 A Yeah, that's correct.</p> <p style="text-align: right;">Page 255</p>	<p>1 concussion syndrome symptoms can advance over time? 2 A I did, yes. 3 Q And you're aware of that because you 4 worked with the Players Association and you even 5 read a few studies or articles, as I recall. Is 6 that correct? 7 A Correct.</p> <p style="text-align: right;">Page 257</p>

<p>Page 262</p>	<p>Page 264</p> <p>10 BY MR. DENNIE:</p> <p>11 Q If you will flip over to Section</p> <p>12 5.7(b) of Exhibit 1.</p> <p>13 A You said (b)?</p> <p>14 Q 5.7(b), yes, ma'am.</p> <p>15 A I'm there.</p> <p>16 Q What do you understand that Section</p> <p>17 to pertain to?</p> <p>18 A Reclassification of T&P benefits.</p> <p>Page 263</p>
	<p>Page 265</p>

<p>4 Q Is changed circumstances defined in 5 the Plan? 6 A No. 7</p> <p>21 Q So do you want to change your answer 22 on who came up with the definition of changed Page 266</p>	<p>1</p> <p>5 Q In your approximately 15 years on the 6 committee, how many reclassification decisions have 7 you been a part of? 8 A Maybe between 10 and 15. 9 Q And in the 10 or 15 reclassification 10 decisions that you have been a part of, have you 11 had to determine what changed circumstances means 12 in all 10 or 15 of those cases? 13 A Yes. 14 Q What do you think it means? 15 A It means a new or different injury or 16 illness or impairment.</p> <p>Page 268</p>
<p>1 circumstances? 2 A Yes, as a matter of fact I do. I 3 don't know who came up with the definition. 4</p> <p>Page 267</p>	<p>Page 269</p>

7 THE WITNESS: I agree that a new
8 impairment can include a concussion symptom, yeah.

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9 earlier you testified that as it pertains to
10 Mr. Cloud's 2016 reclassification decision letter,
11 you didn't read it before it went out, correct?

12 A That is correct.

16 Q So you certainly didn't tell anyone,
17 "This is what the definition of changed
18 circumstance that I want to include in this
19 decision letter," correct?

20 A Correct.

Page 271

14 Q Have you ever asked anyone to define
15 for you what changed circumstances means?

16 A Not that I recall.

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<p>22 Q Is clear and convincing defined</p> <p style="text-align: right;">Page 274</p>	<p>1 that there be a logical definition of clear and</p> <p>2 convincing that you would apply to every case?</p> <p>3 A Yes, it would be helpful.</p> <p>4 Q Because you want uniform consistency</p> <p>5 on the way that disability benefits applications</p> <p>6 are being decided, correct?</p> <p>7 A It would definitely be helpful.</p> <p>14 Q You would agree it's important for</p> <p>15 players to understand that there's uniformity in</p> <p>16 the way things are being applied across the board</p> <p>17 in disabled cases, correct?</p> <p>18 A I would agree with that, yeah.</p> <p style="text-align: right;">Page 276</p>
<p>1 anywhere in the Plan?</p> <p>2 A No.</p> <p>3 Q Has anyone told you what clear and</p> <p>4 convincing means?</p> <p>5 A Not that I recall.</p> <p>9 Q Have you come up with your own</p> <p>10 definition of what clear and convincing means?</p> <p>11 A I'm not sure.</p> <p>21 Q Don't you think it's important if</p> <p>22 you're trying to apply a set of facts to the Plan,</p> <p style="text-align: right;">Page 275</p>	<p>?</p> <p style="text-align: right;">Page 277</p>

<p>1</p> <p>10 Are you disputing that Mr. Cloud is</p> <p>11 disabled under the terms of Plan?</p> <p>12 A I am not.</p>	<p>12 Correct me if I'm wrong, but you</p> <p>13 testified earlier that a new concussion symptom can</p> <p>14 qualify as a new impairment, meaning it's a changed</p> <p>15 circumstance in the terms of the Plan, correct?</p> <p>16 A Yes.</p>

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Page 283

Page 285

72 (Pages 282 - 285)

14 Q Correct me if I'm wrong, you said
15 that the concussion symptoms that you know of are
16 headaches, dizziness, sleepiness, and vertigo. Is
17 that correct?

18 A Correct.

Page 294

Page 296

6 Q Are there any additional concussion
7 symptoms that you know of?

8 A Maybe forgetfulness.

9 Q Anything else?

10 A Anger.

20 Q So, for example, forgetfulness, you
21 might forget small things now, but five years from
22 now you may not remember virtually anything. Is

Page 295

Page 297

75 (Pages 294 - 297)

1 that a progression of concussion symptoms that
2 you've seen in other disability cases that you've
3 administered on the committee?
4 A Yes.

1 Q Is migraines a common concussion
2 symptom?

3 A Yes.

4 Q Is dementia a common concussion
5 symptom?

6 A Yes.

7 Q Is failure to maintain verbal fluency
8 a common concussion symptom?

9 A Yes.

10 Q Is unpredictability a common
11 concussion symptom?

12 A Yes.

13 Q Is irritability a common concussion
14 symptom?

15 A Yes.

16 Q Is mood swings a common concussion
17 symptom?

18 A Yes.

20 Based on your role on the committee,
21 and your understanding of concussion symptoms,
22 trouble sleeping may be a symptom?

Page 298

?

Page 300

1 A I believe so.

2 Q Is sensitivity to light a common
3 concussion symptom that you have seen?

4 A Yes.

5 Q Is paranoia a common concussion
6 symptom that you've seen?

7 A Yes.

8 Q Is lack of focus or inability to
9 focus a common concussion symptom that you've seen?

10 A Yes.

11 Q Is suicidal thoughts a common
12 concussion symptom that you've seen?

13 A Yes.

14 Q Is failure to grasp reality a common
15 concussion symptom that you've seen?

16 A I believe so.

17 Q Is failure to maintain an appointment
18 a common concussion symptom?

19 A Yes.

20 Q Is depression a common concussion
21 symptom?

22 A Yes.

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8 Q Based on the research that you've
9 read on concussions and common media writings, is
10 it fair to say that over a period of time, these
11 concussion symptoms can get much more severe?

12 A Yes, it is fair to say that they can
13 get worse.

Page 301

21 Q If you look on CLOUD-AR-108, of
22 Exhibit 7, you will see a discussion of neck, lower
Page 302

Page 304

1 back foot, lower leg issues. Do you see that?
2 A I see it.
3 Q Ultimately the conclusion in his file
4 was Mr. Cloud suffered from both neurological and
5 orthopedic ailments. Is that correct?
6 A Correct.

Page 303

Page 305

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	<p>17 Q Have you ever seen a PET scan</p> <p>18 presented to the committee on a player's</p> <p>19 application?</p> <p>20 A I believe I have.</p> <p>21 Q What do you understand a PET scan to</p> <p>22 be?</p> <p>Page 306 Page 308</p>
	<p>1 A A scan of the brain.</p> <p>2 Q And do you understand or know what</p> <p>3 that PET scan shows?</p> <p>4 A Abnormalities of the brain.</p> <p>10 Q When you look at a PET scan, what</p> <p>11 shows the abnormality?</p> <p>12 A The coloring maybe, the shading of</p> <p>13 the scan of the brain.</p> <p>14 Q So let me make sure we're on the same</p> <p>15 page and saying the same things.</p> <p>16 So if you've got a scan of the brain</p> <p>17 or a picture of the brain, there's going to be most</p> <p>18 likely some sort of cylindrical or circular spot</p> <p>19 that's a different color which shows there's an</p> <p>20 abnormality, correct?</p> <p>21 A I think that's what it is.</p> <p>Page 307 Page 309</p>

78 (Pages 306 - 309)

<p data-bbox="743 940 768 972">?</p> <p data-bbox="764 974 852 1003">Page 310</p>	<p data-bbox="1386 974 1474 1003">Page 312</p>
<p data-bbox="764 1871 852 1900">Page 311</p>	<p data-bbox="873 1184 1414 1293">5 Q Okay. Are you aware of any other 6 circumstance where Mr. Cloud sustained orthopedic 7 injuries outside of playing in the NFL?</p> <p data-bbox="873 1302 1154 1331">8 A I am not aware.</p> <p data-bbox="1386 1871 1474 1900">Page 313</p>

<p>Page 314</p>	<p>1 A Yep. Yes. 2 Q Okay. Is Dr. Canizares still a 3 neutral physician? 4 A Yes. 5 Q Is he someone you interface with 6 often? 7 A No. 8 Q Is there any reason that x-ray films, 9 scans were not provided to Mr. Cloud when he 10 requested them? Is there any reason for that? 11 A You said when he requested them? 12 Q Yes, ma'am. 13 A I don't know. I'm not aware of any 14 reason. 15 Q If you will flip over to 174, so 16 CLOUD-AR-174 of Exhibit 2. 17 A I'm here, okay. You said 174? 18 Q Yes, ma'am. 19 A Okay. 20 Q Does this appear to be a copy of 21 Dr. DiDio's report? 22 A It does.</p> <p>Page 316</p>
<p>15 Q All right. Either way, if you flip 16 to AR-172 of Exhibit 2, do you see there that there 17 were various x-rays that were performed on 18 Mr. Cloud? 19 A Yes. 20 Q And those were by Dr. Canizares? 21 A Canizares. 22 Q Canizares?</p> <p>Page 315</p>	<p>1 Q Is there any reason that the full 2 copy of Dr. DiDio's report was not provided to 3 Mr. Cloud until 2019? 4 A I have no idea.</p> <p>18 Q And down toward the bottom of 174, 19 there's a reference that Mr. Cloud was forgetting 20 small things like people's names. Is that correct? 21 A I see it, yes. 22 Q Are there any other concussion</p> <p>Page 317</p>

<p>1 symptoms reported back in 2010?</p> <p>2 A I see headaches, vertigo. Bed spins.</p> <p>3 Q That's part of vertigo?</p> <p>4 A Yeah, I see that now. Yeah.</p> <p>5 Q Okay.</p> <p>6 A Repetition.</p> <p>7 Q I'm sorry?</p> <p>8 A Repetition, repeating himself.</p> <p>9 Q Repetition and?</p> <p>10 A And then I said "repeating himself."</p> <p>11 Q So you're saying repeating himself is</p> <p>12 a concussion symptom?</p> <p>13 A I would think so.</p> <p>14 Q Okay.</p> <p>15 A I would think it can be.</p> <p>16 Q Any others that you recall?</p> <p>17 A That's it.</p> <p>18 Q So the four concussion symptoms that</p> <p>19 you see from the 2010 request for line of duty</p> <p>20 benefits; headaches, vertigo, forgetting names, and</p> <p>21 repeating himself. Is that correct?</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 318</p>	<p>17 Q There's a listing of post-concussion</p> <p>18 syndrome, clinical depression, dementia, migraine,</p> <p>19 vertigo, impair verbal fluency. And then if you</p> <p>20 flip to CLOUD-AR-079, it also list migraine</p> <p>21 headaches, depression, memory loss, vertigo,</p> <p>22 insomnia, unpredictable irritability. Do you see</p> <p style="text-align: right;">Page 320</p>
<p>6 Q Okay. So if you would look at</p> <p>7 CLOUD-AR-175, there's again a reference to the</p> <p>8 October 31, 2004 concussion, correct?</p> <p>9 A I see it.</p> <p>10 Q And I read it, and tell me if I'm</p> <p>11 wrong, "There is clear documentation of a single</p> <p>12 concussion sustained on October 31, 2004, while</p> <p>13 playing with the New York Giants."</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q Okay. And that's the head-to-head</p> <p>17 collision that we talked about a couple of times</p> <p>18 today, correct?</p> <p>19 A That's my assumption, yes.</p> <p style="text-align: right;">Page 319</p>	<p>1 that?</p> <p>2 A I do.</p> <p>3 Q In addition to the neurological</p> <p>4 issues associated with concussion syndrome, there's</p> <p>5 also several orthopedic issues presented in the</p> <p>6 section titled, "Disabilities and Causes." Is that</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q There are acute compartment syndrome,</p> <p>10 plantar fasciitis, nerve injury, bilateral</p> <p>11 shoulders, bilateral elbow, bilateral wrists,</p> <p>12 hands, fingers, bilateral feet and toes, bilateral</p> <p>13 ankles, bilateral knees, bilateral hips, lumbar,</p> <p>14 cervical, thoracic. And then if you flip over to</p> <p>15 CLOUD-AR-097, severe pain in right foot, left great</p> <p>16 foot, left hip, basic neck, lower back, numbness in</p> <p>17 right left leg, arms and fingers.</p> <p>18 Did I get all the orthopedic issues?</p> <p>19 A You did.</p> <p>20 Q And so those were the bases by which</p> <p>21 Mr. Cloud presented in his T&P application in 2004?</p> <p>22 A That's what it appears to be to me.</p> <p style="text-align: right;">Page 321</p>

<p>1</p> <p>Page 322</p>	<p>1</p> <p>Page 324</p>
<p>7 Q Did you write Exhibit 4?</p> <p>8 A I did not.</p> <p>9 Q Do you know who wrote Exhibit 4?</p> <p>10 A I do not.</p> <p>11 Q Did you review Exhibit 4 before it</p> <p>12 was disseminated to Mr. Cloud?</p> <p>13 A Not that I recall.</p> <p>Page 323</p>	<p>Page 325</p>

APPENDIX 4

From: Christian Dennie
To: Michael L. Junk; Edward J. Meehan
Subject: Cloud v. Bert Bell
Date: Friday, August 6, 2021 8:37:09 AM

Gentlemen,

I enjoyed meeting you all over the course of the last few days. Thank you for hosting the depositions. I will get you my receipts from travel in the next few days.

As we discussed during the depositions, I believe many, many records have not been produced that are responsive to our discovery requests that were propounded many, many months ago. I learned during the depositions that there are Director's Reports and Counsel Reports made on a quarterly basis that reference funding for the Plan, distribution of benefits, and statistics for grants and denials. These are documents responsive to RFP 37, 57, and 58. These reports may say other things, but those are areas that were referenced by the deponent. I understand the Counsel Reports may have some attorney-client information, but contain other information that would not fit into that box. The attorney-client information can be redacted. At a minimum, I need these documents produced by noon on Monday so I have sufficient time to review them in advance of Mr. Vincent's deposition. Being that Mr. Vincent will likely give me more information about other documents that have not been produced, I request that you go back through our 1st and 2nd RFP and give me all documents that are responsive. Otherwise, we will have to seek to compel responsive information, which I prefer not to do.

I am following up again on Dr. Mandelbaum's records. When will they be produced?

At the end of the deposition, you mentioned you would assist us in locating the IMPACT exam conducted on Mr. Cloud by the New England Patriots. If you can provide that, we would greatly appreciate it.

As you know, we were able to obtain a lot of favorable information during the depositions. It's not too late to get back on Judge Ferguson's calendar for mediation and abide by the court's order. As we discussed after the deposition, the Plan has a lot of risk in this case that it has never had to address. No one has ever been able to look behind the curtain as we have been granted the opportunity to do. What's going on behind the curtain does not look good for the Plan. We are going to continue to depose the relevant people and will continue to find information that supports the illegality of the Plan. We are going to seek to compel the production of the Board members for deposition (as we discussed and you confirmed disagreement). I feel confident we will be able to obtain even more valuable information in those depositions. With that said, you can eliminate your risk and end the roadmap I am developing for all future claims filed by other players by getting this resolved and giving Mr. Cloud what he is owed. Otherwise, as I mentioned with the NCAA as an example, when you push the envelope and try to get rulings from court's, sometimes it doesn't work out the way you wanted. A bad precedent will lead to even more litigation and worse results. The Plan (and associated bodies) made mistakes here. With all that said, let me know when you want to talk. We are always open. If, on the other hand, you prefer to litigate and permit Mr. Cloud to fully develop the facts, we have no problem moving forward.

I look forward to hearing from you. Have a good day and good weekend.

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APPENDIX 5

From: Christian Dennie
To: Meehan, Edward J. (EMeehan@groom.com)
Cc: Junk, Michael L. (mjunk@groom.com); Lee Ann Burks; "Christian Dennie (CDennie@bgsfirm.com)"
Subject: RE: Civil Action No.: 3:20-CV-01277-E; Cloud v. Bert Bell/Pete Rozelle NFL Player Retirement Plan
Date: Monday, August 16, 2021 8:43:00 AM

Mr. Meehan,

Good morning. I hope you had a nice and relaxing weekend.

As I have mentioned in multiple emails, calls, and in-person discussions, I do not desire to fight over discovery. The documents that we are requesting should have been produced long ago. Frankly, I would have expected to see these documents produced along with initial disclosures. Nonetheless, I would still prefer not to have to address these missing documents with the Court. It benefits both sides to reach a resolution on the outstanding discovery.

Our position is simple, Rule 26(b)(1) of the Federal Rules of Civil Procedure allows Plaintiff to "obtain discovery regarding any nonprivileged matter that is relevant to any part's claim or defense. . . ." The outstanding discovery at issue "is reasonably calculated to lead to the discovery of admissible evidence." The 5th Circuit addressed issues similar to this in Crosby and permitted to discovery. In Schultz, the 5th Circuit addressed evidence of "inconsistent treatment" of similar claims by an ERISA plan. Following this line of cases, the Court, on July 22, 2021, ordered that Plaintiff was permitted to conduct discovery as follows:

Plaintiff may conduct discovery on the following subjects: (1) requests and communications between Plaintiff and Defendant requesting medical documentation; (2) any medical records in possession of Defendant that have not been provided to Plaintiff; and (3) such other information that is relevant to the completeness of the Administrative Record in this case and/or whether Defendant complied with ERISA's procedural regulations.

We are seeking discovery of the Director's reports (prepared quarterly), Counsel's reports (prepared quarterly), and the database of claims that were granted or denied for T&P benefits and whether the athlete received Inactive A or Active Football benefits. This discovery is relevant and responsive to RFPs. In addition to being relevant and reasonably calculated to lead to the discovery of admissible evidence, the production of these records is necessary to evaluate 1) inconsistent treatment by the Plan of similar claims; 2) to determine with the Plan complied with ERISA's procedural regulations; and 3) to evaluate whether the Plan acted arbitrarily and capriciously in denying Plaintiff's claim. As your witnesses have noted, the members of the Board are fiduciaries and the Plan was designed for players like Plaintiff as the beneficiaries. We must have this information to explore disputed matters. As I have previously noted, Plaintiff was denied the opportunity to question witnesses based on these records. We learned for the first time of the existence of such records during the depositions.

You noted in an email that I don't know the contents of the Director's reports (prepared quarterly), Counsel's reports (prepared quarterly), and the database of claims. You are correct that I have never seen these documents. They have been withheld from production. Your witnesses, however, testified that the director's reports and counsel's reports have information about funding for the Plan, distribution of benefits, and statistics for grants and denials. As to the database, Mr. Vincent testified that queries can be run to produce T&P applications that show what was granted or denied, whether Inactive A or Active Football benefits were awarded, and possibly the basis for the decision to grant Inactive A or Active Football benefits. This is information that we need.

Again, I am happy to discuss these issues with you in an effort to resolve this dispute.

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APPENDIX 6



NFL PLAYER BENEFITS

PENSION PLAN

200 St. Paul Street, Suite 2420
Baltimore, Maryland 21202
Phone 800.638.3186
Fax 410.783.0041

November 23, 2016

Mr. Michael Cloud
120 Mont Blanc Drive
Heath, Texas 75032

Re: Bert Bell/Pete Rozelle NFL Player Retirement Plan—Final Decision on Review

Dear Mr. Cloud:

At its November 16, 2016 meeting the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your appeal from the Disability Initial Claims Committee's ("Committee") decision denying your request for reclassification of your total and permanent disability ("T&P") benefits to the Active Football category. We regret to inform you that the Retirement Board denied your appeal for the reasons described below.

Discussion

The Plan received your original application for T&P benefits on July 1, 2014. As you know, the Committee found you to be totally and permanently disabled by virtue of your Social Security Administration ("SSA") disability award, and it awarded you Inactive A T&P benefits, effective May 1, 2014. The basis for the Committee's decision was explained to you in a letter dated July 23, 2014. You did not appeal that decision.

By letter received February 17, 2016, your representative, Jennifer Cloud, requested that your Inactive A benefits be reclassified to the Active Football category. She stated that you "became disabled in 2005, while playing for the New York Giants due to cumulative mental disorder," and she submitted a copy of your SSA file and other records.

The Committee denied your request for reclassification by letter dated March 2, 2016.

By letter received September 2, 2016, Ms. Cloud appealed the Committee's decision to the Retirement Board. With the appeal, she stated that your SSA award resulted from a severe mental disorder stemming from multiple concussions, and she argued that your disability arose shortly after your October 2004 head trauma. Ms. Cloud submitted additional medical records with her appeal, such as a report from psychologist Dr. John Cronin dated February 2, 2012.

Mr. Michael Cloud
November 23, 2016
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At its November 16, 2016 meeting, the Retirement Board reviewed your request for reclassification and determined that it must be denied. Section 5.7(b) governs requests for reclassification such as yours. It permits reclassification only where a Player "shows by evidence found by the Retirement Board... to be clear and convincing that, because of changed circumstances, the Player satisfies the conditions of eligibility for a benefit under a different category of T&P benefits." The Retirement Board interprets Section 5.7(b)'s "changed circumstances" requirement to mean a new or different impairment from the one that originally qualified you for T&P benefits. Because you seek reclassification to Active Football, you would have to clearly and convincingly show that (1) you have a new or different impairment (Section 5.7(b)), (2) that new or different impairment arose while you were an Active Player (Section 5.3(a)), and (3) it caused you to be totally and permanently disabled "shortly after" it first (Section 5.3(a)). Under Section 5.3(e) of the Plan, you satisfy the "shortly after" requirement if you became totally and permanently disabled within six months of when your disabling condition or impairment first arose. Conversely, you do not meet the "shortly after" requirement if you became totally and permanently disabled more than twelve months after the condition or impairment arose. The Retirement Board has "the right and duty to determine whether the 'shortly after' standard is satisfied" for any claim of total and permanent disability falling within this six to twelve month period.

The Retirement Board reviewed your 2014 application for T&P benefits and noted that it was based on a combination of orthopedic, neurological, and cognitive impairments, such as post-concussion syndrome, clinical depression, dementia pugilistica, migraine, vertigo, impaired verbal fluency, acute compartment syndrome, plantar fasciitis, cluneal nerve injury, and multiple orthopedic impairments. The Retirement Board also noted that your request for reclassification is based on what you call "severe" mental impairments, but those are the same impairments listed in your 2014 application, and they formed the basis of your award of Inactive A T&P benefits (and your SSA award). Thus, the Retirement Board determined that you have not met Section 5.7(b)'s reclassification requirements because you have not clearly and convincingly shown that you are totally and permanently disabled by a new or different impairment. The Retirement Board also determined that, even if your request for reclassification were based on a new or different impairment, the medical evidence you submitted does not show that you meet the requirements for the Active Football category. The evidence you submitted does not show that you are totally and permanently disabled, and it all falls well outside any conceivable "shortly after" period required for Active Football benefits. The Retirement Board noted that, for the Active Football category, it is not enough that your disability first arise during your NFL career; it must also become totally and permanently disabling "shortly after" it first arises.

Mr. Michael Cloud
November 23, 2016
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In any event, the Retirement Board also determined that your appeal was untimely under Section 12.6(a). The Retirement Board noted that (1) according to Plan records, you received the decision letter on March 4, 2016; (2) that decision letter advised you of the 180-day appeal deadline (which expired on August 31, 2016); and (3) the Plan did not receive your appeal until September 2, 2016, two days after the 180-day deadline expired.

For these reasons, the Retirement Board concluded that it cannot honor your request to reclassify your existing Inactive benefits to the Active Football category. For this reason, the Retirement Board denied your appeal.

Appeal Rights

You should regard this letter as a final decision on review within the meaning of Section 503 of the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder by the Department of Labor. You are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. You have the right to bring an action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, within 42 months from the date of this letter, which is May 16, 2020.

Please call the NFL Player Benefits Office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Michael B. Miller". The signature is written in a cursive, flowing style.

Michael B. Miller
Plan Director

Enclosure

cc: Jennifer Cloud

APPENDIX 7

**BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN
RETIREMENT BOARD MEETING MINUTES**

November 15-16, 2016
Atlanta, Georgia

A meeting of the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Retirement Plan" or "Plan") was held in Atlanta, Georgia on November 15-16, 2016. The following individuals attended:

Retirement Board:

Management Council designated members:

Katie Blackburn
Dick Cass
Ted Philips

NFLPA designated members:

Sam McCullum
Jeff Van Note
Robert Smith

Commissioner's Delegate:

Harold Henderson

Additional Attendees:

Gerald Abrams (by telephone)	Eric Field	Heather McPhee
Alvaro Anillo	Chris Flohr	Mike Miller
Audrey Askew (by telephone)	Bruce Gould	Lashay Rose
Hoby Brenner	Eric Harnish	Craig Svendsen
Mike Casey	Mike Junk	Sam Vincent
Andre Collins	Kristen Kirk	Adora Williams
Tom DePaso	Larry Lamade	Michele Yaras-Davis
Jack Donlan	Alex LeBlanc	
Stacey Eisenstein	Belinda Lerner	
Doug Ell	Mike Maricco	
Larry Ferazani	Bethany Marshall	

All present could hear each other and be heard. Unless otherwise noted, all actions were unanimous.



Individual Player Cases

The Retirement Board took the following actions (unless otherwise noted, all actions were unanimous):

A. BENEFIT CONTINUATION



B. MISCELLANEOUS BENEFITS



2. **Michael Cloud** On review of appeal from earlier decision to award Inactive A total and permanent disability benefits effective May 1, 2014, denied appeal for reclassification to the Active Football category for failure to meet the requirements of Plan section 5.7(b).



C. Credited Seasons

